

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

13-CR-607 (JFB)

-against- :

United States Courthouse  
Central Islip, New York

PHILLIP A. KENNER,  
a/k/a "Philip Kenner"  
and

TOMMY C. CONSTANTINE,  
a/k/a "Tommy C. Hormovitis,

TRANSCRIPT OF TRIAL

Defendants. : May 6, 2015  
9:50 a.m.

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BEFORE THE HONORABLE JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Government:

LORETTA E. LYNCH  
United States Attorney  
100 Federal Plaza  
Central Islip, New York 11722  
BY: JAMES M. MISKIEWICZ  
SARITHA KOMATIREDDY  
Assistant United States Attorneys

For the Defendant:  
Kenner:

BY: RICHARD HALEY, ESQ.  
1601 Veterans Highway Ste. 425  
Islandia, New York 11749

For the Defendant  
Constantine:

BY: ROBERT LARUSSO, ESQ.  
ANDREW OLIVERAS, ESQ.  
300 Old Country Road  
Mineola, New York 11572

Court Reporter:

Perry Auerbach  
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Proceedings recorded by mechanical stenography.  
Transcript produced by computer.

1 (Case called.)

2 (Appearances stated for the record.)

3 THE COURT: Okay, all the jurors are here. Are  
4 you ready to bring them in?

5 MS. KOMATIREDDY: No, your Honor. We want to  
6 read -- move a number of bank records into evidence and a  
7 stipulation entered into by the party. There are  
8 approximately 15 stipulations. Rather than read each one  
9 verbatim, if it's okay with the Court I would propose that  
10 I summarize and read the exhibit numbers into evidence,  
11 into the transcript.

12 THE COURT: Summarize the stipulations?

13 MS. KOMATIREDDY: Yes, summarize the bank  
14 records that the parties have agreed to, and move the  
15 exhibits and stipulations into evidence.

16 THE COURT: Is there any objection to that?

17 MR. HALEY: Absolutely none.

18 MR. LA RUSSO: No.

19 MR. HALEY: We don't read the whole stipulation  
20 into record.

21 THE COURT: That's what she said.

22 I have to leave a little early today. I was  
23 thinking that we would after the lunch break, go straight  
24 through without a recess to 3:30. Does that work for  
25 everybody?

1 MR. LA RUSSO: That works fine with me.

2 THE COURT: All right. Let's bring in the jury.

3 MR. HALEY: Your Honor, with the Court's  
4 permission I moved the lectern. I think that it was  
5 obstructing the view of the jurors. But it's your  
6 courtroom.

7 THE COURT: No, that's fine. That's a good  
8 idea.

9 THE CLERK: All rise.

10 (Whereupon, the jury entered the courtroom.)

11 THE COURT: Please be seated. Good morning,  
12 members of the jury.

13 THE JURY: Good morning.

14 THE COURT: It's good to see everyone again this  
15 morning. Just one scheduling matter today. I have to  
16 leave a little bit early today. What we're going to do  
17 this afternoon, after the lunch break we'll go to 3:30.  
18 We won't take an afternoon break, we'll just go to 3:15,  
19 3:30.

20 As you'll recall yesterday when we ended,  
21 Mr. Peca was on direct examination so we'll continue from  
22 that point. Mr. Peca, I remind you that you are still  
23 under oath, do you understand.

24 THE WITNESS: I do.

25

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1     **MICHAEL PECA,**

2             called as a witness, having been previously  
3             duly sworn, was examined and testified further  
4             as follows:

5             THE COURT: Go ahead.

6             MR. MISKIEWICZ: Thank you, your Honor. May we  
7             now read the stipulations.

8             MS. KOMATIREDDY: Thank you, your Honor.

9             The parties have agreed to stipulate to the  
10            admission of various exhibits as bank records.

11            It is hereby stipulated and agreed by and been  
12            the United States of America and the defendants Phillip A.  
13            Kenner and Tommy C. Constantine through their attorneys,  
14            that the following exhibits are bank records, including  
15            true and accurate copies of monthly account statements,  
16            checks drawn, checks deposited, wire transfers of money  
17            and other internal deposit documents for accounts at  
18            various banks as follows.

19            Government Exhibit 1101 through 1105 are bank  
20            records from First Century Bank.

21            Government Exhibits 1200 through 1203 and 1209  
22            through 1234 are bank records from Alliance Bank of  
23            Arizona.

24            Government Exhibits 1301 through 1309 are bank  
25            records from the Bank of Arizona.

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1 Government's Exhibit 1401 through 1424, 1427,  
2 1428, 1430, 1432, 1433 and 1490 A through 0 are bank  
3 records from with Wells Fargo bank.

4 Government's Exhibits 1602 is a bank record from  
5 Commerce Bank.

6 Government Exhibits 1603 and 1604 are bank  
7 records from TD Bank.

8 Government Exhibits 1701 through 1737, 1751  
9 through 1759 and 1771 through 1775 are bank records from  
10 the Bank of America.

11 Government Exhibits 2200 through 2216 are bank  
12 records from Johnson Bank.

13 Government Exhibits 2300 through 2306 are bank  
14 records from Wachovia Bank.

15 Government Exhibits 3001 through 3010, 3051 and  
16 3053 through 3062 are bank records from Citibank.

17 Government Exhibits 3101 through 3112 are bank  
18 records from American Express.

19 Government Exhibits 3201, 3202, 3207 and 3208  
20 are bank records from Chase Bank.

21 Government's Exhibit 3203 through 3206 are also  
22 bank records from Chase Bank.

23 Government Exhibits 3251 through 3263 are also  
24 bank records from Chase Bank.

25 And Government Exhibits 3301 and 3302 are bank

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1 records from Fidelity Investments.

2 Government Exhibits 3304 through 3306 are bank  
3 records from Citizens Bank.

4 And the following government exhibits are bank  
5 records from Northern Trust Bank: Government Exhibits  
6 2001 through 2020, 2101 through 2111, 2133 through 2145,  
7 2158, 2081 A through C, 2082 A and B, 2082 A and B, 2083 A  
8 and B, 2084 A, 2086 A and B, 2087 A and B, 2088 A and B,  
9 2089 A and B, 2090 A through C and 2091 A and B. As well  
10 as 2158.

11 The government moves the foregoing exhibits as  
12 well as marked exhibits marked stipulation, stip one  
13 through stip 15 into evidence.

14 THE COURT: Okay. So any objection to the  
15 stipulations one through 15 and all the records referenced  
16 in those stipulations coming into evidence. Any  
17 objection.

18 MR. LA RUSSO: No, your Honor.

19 MR. HALEY: No, sir.

20 (Government's Exhibits 1-15 and above referenced  
21 documents were in evidence.)

22 THE COURT: So as you heard, members of the  
23 jury, the prosecutor summarized those stipulations,  
24 they're evidence in evidence. If you want to read them  
25 individually you just look at the information contained in

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1 those and although we'll proceed now.

2 The lawyers are working together to try to save  
3 time, as you'll see. And we'll now proceed about the  
4 testimony. Go ahead, Mr. Miskiewicz.

5 MR. MISKIEWICZ: Thank you, your Honor.

6

7 DIRECT EXAMINATION (Continues.)

8 BY MR. MISKIEWICZ:

9 Q. Good morning, Mr. Peca.

10 A. Good morning.

11 Q. Mr. Peca, before we ended yesterday I was showing you  
12 a series of documents regarding Northern Trust Bank bank  
13 account and line of credit specifically and did you  
14 testify that you had a line of credit with the numbers  
15 289369 that was your line of credit at Northern Trust.

16 Now, I believe you also testified, the record  
17 will reflect, that you did not get statements indicating,  
18 contemporaneous statements about what was going on with  
19 that line of credit, is that accurate?

20 A. Correct.

21 Q. I show you -- and again, do you recall approximately  
22 what year your line of credit was opened?

23 A. I believe it was '05.

24 Q. And I'm showing you Government's Exhibit 2002, which  
25 is now in evidence. (Hanging.)

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1                    Could you just read what the date of that is?

2        A.     The date.

3        Q.     What's the date of the actual statement?

4        A.     The statement date looks like October 1, 2006 through  
5        October 31, 2006.

6        Q.     And have you ever seen that statement during the  
7        period of time that your line of credit was opened?

8        A.     I have not.

9        Q.     I want to direct your attention to, there's a -- do  
10       you see the box at the bottom which says deposits and  
11       credits?

12       A.     I do.

13       Q.     First of all, I'm sorry, what is the name of the  
14       account in whose name is this particular Northern Trust  
15       bank account statement in.

16       A.     Little Isle IV LLC.

17       Q.     And where it says deposits and credits, that means  
18       money coming in. Do you see that?

19       A.     I do.

20       Q.     And I directing your attention to the date 10/19.

21       A.     Okay.

22       Q.     Do you see \$395,000 wire?

23       A.     Yes.

24       Q.     Deposited in there?

25       A.     I do.



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1 Q. Does it say what account number that \$395,000 wire is  
2 arriving from?

3 A. Yes, it does.

4 Q. And what is the account number if you can read it for  
5 the jury?

6 A. The loan account number 289369.

7 Q. Whose account number is that?

8 A. I think that's my account number.

9 Q. All right. Now, what was the Little Isle IV LLC if  
10 you recall?

11 A. Little Isle IV LLC was -- were myself and other  
12 players had invested money for the sole purpose of a real  
13 estate investment in the Little Isle of Hawaii.

14 Q. And who controlled that account?

15 A. Philip Kenner.

16 Q. I'll show you now what's been marked and received in  
17 evidence as Government's Exhibit 2003 and ask you to take  
18 a look at that. (Handing.)

19 Looking at 2003, actually, I'm sorry, let's go  
20 back to 2002 just for a second. What's on the screen now,  
21 is that what you were reading from while I was fumbling  
22 with the computer.

23 A. Yes.

24 Q. All right. And this 10/19 transaction, this is the  
25 395 that you were talking about?

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1 A. Correct.

2 Q. And that is your line of credit account number that  
3 I'm pointing to there?

4 A. Yes, it is.

5 Q. And the date of this advertise 10/19/2006; is that  
6 correct?

7 A. That is correct.

8 Q. If you look at the box right above it, other items  
9 paid, do you see that?

10 A. Yes.

11 Q. Do you see on essentially -- not essentially -- do  
12 you see on 10/19, \$395,000 going out?

13 A. I do.

14 Q. So 395 came in and then it went out on the same day,  
15 is that, for the record, correct?

16 A. It is.

17 Q. Showing you now if you turn to, I think that you have  
18 it in your hands, Government's Exhibit 2003. What  
19 account, in whose name is this Northern Trust account?

20 A. Ula Makika LLC.

21 Q. And also on October 19, 2006, can you see if any  
22 deposits hit that account? Where it says deposits and  
23 credits?

24 A. 395,000.

25 Q. Okay. And then on that same day, I'm going upward,

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1 where it says other items paid, do you see \$395,000 being  
2 paid out?

3 A. I do.

4 Q. Same day, right, 10/19?

5 A. 10/19, correct.

6 Q. That's also the same day as on Government's Exhibit  
7 2002, 10/19, the other document?

8 A. Yes.

9 Q. Okay. So all this is happening, you would agree, on  
10 one day, correct?

11 A. Correct.

12 Q. Now, this 10/19 transfer or paid to Led Better  
13 Development Company LLC, 395,000, on this, during this  
14 period of time when you have your line of credit open, had  
15 you ever heard of a Led Better Development Company?

16 A. Never.

17 Q. Did you authorize Mr. Kenner to transfer \$395,000  
18 from your line of credit first to one bank account and  
19 then ultimately to another bank account in the name of or  
20 paid out to Led Better?

21 A. No.

22 Q. Did you authorize that?

23 A. I did not.

24 Q. On or about October 19, 2006?

25 A. No.

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1 Q. Did you ever even know about it?

2 A. I did not.

3 Q. Now, Mr. Peca, you testified yesterday that the line  
4 of credit was to be used, I believe you testified, pardon  
5 me if I'm wrong, but the line of credit was to be used  
6 solely for the purpose of helping I think you said  
7 vertical construction in Hawaii?

8 A. Correct.

9 Q. And I'm going to ask you now when you were speaking  
10 to Mr. Kenner about this line of credit in or about you  
11 2003 or -- I'm sorry -- when it was first opened, was that  
12 your understanding, that it was to be used for Hawaii?

13 A. Sole purpose, yes.

14 Q. Now, you testified, did you not, sir, before a grand  
15 jury in Manhattan in or about March of 2011, didn't you?

16 A. I did.

17 Q. Okay. Were you represented by an attorney prior to  
18 your appearance before the grand jury in Manhattan?

19 A. I was.

20 Q. Did you pay for that lawyer?

21 A. I did.

22 Q. Who was that lawyer?

23 A. Ronald Richards.

24 Q. Where did you get that lawyer from?

25 A. Phil Kenner.

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1 Q. I'm going to get to this later on, but you're  
2 familiar with something called Global Settlement Fund?

3 A. Yes, sir.

4 Q. What is the Global Settlement Fund?

5 A. The Global Settlement Fund was a legal fund designed  
6 for a civil action against Ken Jowdy, with the hopes of  
7 the end game being acquiring the northwestern parcel of  
8 beach front property in the Cabo development, that was  
9 already a buyer in place in order to make everybody whole  
10 on their investment.

11 Q. When does that occur, approximately, what year?

12 A. That meeting occurred in May of 2009.

13 Q. So several years after this \$395,000?

14 A. Correct.

15 Q. When you appeared before the grand jury, had you seen  
16 this document?

17 A. I had not.

18 Q. Did your lawyer at that time, Mr. Richards, show you  
19 that document?

20 A. He did not.

21 Q. Did Mr. Kenner show you that document?

22 A. He did not.

23 Q. Or any of the documents that you've seen so far this  
24 morning?

25 A. The first I've seen them.

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1 Q. And did Mr. Kenner tell you what the purpose of this  
2 grand jury investigation was?

3 A. It was the grand jury convened for pending  
4 prosecution of Ken Jowdy.

5 Q. But with -- who told you that?

6 A. Both Phil Kenner Ron Richards.

7 Q. Back very briefly to the Global Settlement Fund.  
8 When you, did you ever contribute to this Global  
9 Settlement Fund?

10 A. I did.

11 Q. How much money?

12 A. It was \$250,000.

13 Q. It was to fight Ken Jowdy?

14 A. Correct.

15 Q. Where did the money go to?

16 A. It went into Ronald Richards' trust account.

17 Q. Do you know what happened to it after that?

18 A. I do not.

19 Q. And that was about 2009?

20 A. Correct.

21 Q. In the grand jury 2011 Ron Richards is your lawyer  
22 who you found through Mr. Kenner, is his payment through  
23 the Global Settlement Fund?

24 A. It is.

25 Q. Your money, did you pay Mr. Richards to represent you

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1 in the grand jury or --

2 A. I had to pay him separately because there was no more  
3 funds in the Global Settlement Fund.

4 Q. Do you know what happened to that money?

5 A. I do not.

6 Q. Now, you testified yesterday and you agreed this  
7 morning that your understanding was that the sole purpose  
8 of the cash that you invested in Hawaii and this \$1.7  
9 million loan per the line of credit was to be used for  
10 Little Isle IV solely for what? Do you remember what the  
11 told the grand jury?

12 A. I do.

13 Q. Do you remember what you told the grand jury on or  
14 about March 29, 2011, about where the money went?

15 A. Just for that purpose, for Hawaii.

16 Q. Okay. I show you what's been marked as Government's  
17 Exhibit 3500 MP-5, I'm going to ask you to just take a  
18 look at it. Specifically I direct your attention to page  
19 30.

20 MR. HALEY: Is that grand jury testimony, I  
21 don't know what that is, MP-5?

22 MR. MISKIEWICZ: I'll show you. This is 3500.

23 (Showing to Mr. Haley.)

24 Q. I'm just going to ask you to just read to yourself  
25 and specifically for the record drawing your attention to

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1 the question and answer beginning at line seven and read  
2 through to approximately line 20.

3 MR. HALEY: I'm sorry, what page?

4 THE WITNESS: 30.

5 MR. HALEY: Thank you.

6 (Pause.)

7 Q. Now, does that refresh your recollection as to what  
8 you said in 2011 about where the money was going meaning  
9 the money from your line of credit?

10 A. Yes.

11 Q. What did you tell them?

12 A. I basically told them that the Hawaii investment  
13 started with both the cash investment of a hundred  
14 thousand and the line of credit for 1.775 used for Hawaii.

15 Q. And did you indicate or did you say that you knew  
16 something about a Ken Jowdy getting some of that money at  
17 some point in the form of a loan?

18 A. It was never in the outset I never knew when the loan  
19 was made to Ken Jowdy or notified when the loan was made  
20 to Ken Jowdy. We were told well after the fact that the  
21 loan was made to Ken Jowdy. There were so many parts of  
22 the moving investments that it just became part of the  
23 conversation.

24 Q. In 2011 you'll agree with me, did say that some of  
25 that money was a loan to Ken Jowdy?



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1 A. Correct. At that point I learned that some of the  
2 money was used for a loan to Ken Jowdy.

3 Q. Who told you that the money in you line of credit  
4 went to Ken Jowdy?

5 A. Phil Kenner did but it didn't start out that money  
6 from Little Isle IV which belonged to Ken Jowdy. It  
7 started out that we made a loan to Ken Jowdy.

8 Q. When did he tell you that?

9 A. I couldn't tell you exactly, it started 2010 onward.

10 Q. Were there a number of lawsuits pending that you were  
11 aware of?

12 A. There were, a friend of mine Glenn Murphy was in  
13 civil litigation, a dispute with Ken Jowdy. So there  
14 seemed to be a lot of loans out there. So when he said we  
15 made a loan, he never said the Little Isle IV account was  
16 used for the loan to Ken Jowdy. In fact we had a  
17 mediation in California in 2010, the first time I meet him  
18 prior was before getting into a car going back to the  
19 airport, where I confronted him and said did Phil use our  
20 money from Little Isle to buy the home equity in Cabo with  
21 Ken Jowdy and I never got an answer.

22 Q. Let me go back to that episode, you were in a car  
23 with Mr. Constantine?

24 A. We were actually standing out on the sidewalk, we  
25 hadn't had been in the car yet.

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1 Q. Face-to-face thought?

2 A. Correct.

3 Q. And you posed that question to him you said you never  
4 got an answer, but I'm not asking you at that particular  
5 moment when you asked him that very direct question, what,  
6 if anything, did Mr. Constantine respond?

7 A. I don't recall the response. I don't feel he  
8 stonewalled me at all to be quite honest. It's just I  
9 didn't get an answer.

10 Q. All right. In 2011 though when you were in the grand  
11 jury, to the extent that you knew at that time that money  
12 went to Ken Jowdy, what was the source of that  
13 information, in other words, who told you loans for Little  
14 Isle IV were made to Ken Jowdy?

15 A. Phil Kenner.

16 Q. Other than Phil Kenner telling you that, did you know  
17 any of that to be true?

18 A. I did not.

19 Q. Prior to the day in the grand jury, were you prepared  
20 by Mr. Ron Richards for questioning in the grand jury?

21 A. I was.

22 Q. Who else was present during the preparation by your  
23 lawyer?

24 A. That preparation occurred in Ron Richards hotel room  
25 in New York City. Myself, another player by the name of

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1 Turner Stevenson and Darryl Sydor were present and then  
2 Ron Richards proceeded to get Phil Kenner on the phone, .

3 Q. Prior to your meeting with Ron Richards and being  
4 prepared for the grand jury, did Mr. Kenner communicate to  
5 you about the importance of this grand jury appearance?

6 A. He did. You know, his words were this is going to be  
7 the most important business day of your life.

8 Q. And did, were there times during your preparation  
9 that you had difficulty remembering events on your own?

10 A. Absolutely.

11 MR. HALEY: Judge, can I just object to leading  
12 nature of the question. That's my only objection.

13 THE COURT: Sustained.

14 MR. HALEY: Thank you.

15 Q. What kinds of things did you talk about in  
16 preparation for your grand jury appearance?

17 A. The main theme in that preparation was being we're  
18 all here, this whole thing is because a loan is made to  
19 Ken Jowdy and we have to pay it back. That was basically  
20 the crux of it.

21 Q. By this time in 2011, again, had you seen any records  
22 substantiating that?

23 A. I did not.

24 Q. And other than what you were told during this prep  
25 session did you have any independent knowledge about the

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1 truth of that?

2 A. I did not.

3 Q. So I'll just ask you one more time, as you sit here  
4 today, back when the line of credit was first opened, what  
5 was the purpose of the line of credit?

6 A. It was solely to be used for vertical development  
7 infrastructure and acquisition of the property.

8 Q. Who told you that?

9 A. Phil Kenner.

10 Q. Now, I'll show you another series of exhibits now in  
11 evidence. Showing you what's been marked and received in  
12 evidence as government's 2013. (Handing.)

13 Having shown you Government's Exhibit 2013 now  
14 on the screen also. Just for the record, what is the name  
15 on the account at this Northern Trust document?

16 A. Little Isle IV LLC.

17 Q. What is the date period or date range?

18 A. July 7th to July 19th of 2005.

19 Q. Turning your attention to page 2 under the box that  
20 says deposits and credits, do you see that?

21 A. I do.

22 Q. Do you see a line there date 07-15?

23 A. Yes.

24 Q. And a description that says note proceeds?

25 A. Yes.

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1 Q. And it's for \$25,000?

2 A. Correct.

3 Q. And where according to the description there, where  
4 is in money coming from?

5 A. My line of credit account.

6 Q. The 289369 account number?

7 A. Correct.

8 Q. Again on or about this date or date range, roughly  
9 July of '05, had you ever seen this document before?

10 A. I had not.

11 Q. Or I should say did you see that document shortly  
12 thereafter?

13 A. No, I did not.

14 Q. July of '05 or any time thereafter?

15 A. No.

16 Q. Do you know where that money went?

17 A. I do not.

18 Q. On that particular day, did you authorize or do you  
19 have any recollection of authorizing a \$25,000 drawdown be  
20 made from your line of credit and sent to Little Isle IV?

21 A. No.

22 Q. I think that I showed you yesterday Government's  
23 Exhibit 2001, also in evidence. 2001. This says  
24 something about transaction history at the very beginning  
25 and has your name at the top and your account number, do

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1     you see that?

2     A.    I do.

3     Q.    We looked at that yesterday?

4     A.    Yes.

5     Q.    We're going to turn to the second page of that  
6     transaction history focusing you on that same date we were  
7     talking about a little bit earlier, 10/19/2006. There's a  
8     line that says note increase for \$395,000. Again, had you  
9     ever seen this document before?

10    A.    Never have, no.

11    Q.    Prior to your preparation for trial here today, had  
12    you ever seen it?

13    A.    I don't recall seeing this document.

14    Q.    And the last column here is balance part or fee.  
15    Continues into the second page. On that day, when that  
16    395,000 note increase occurs, do you see what your balance  
17    was?

18    A.    I do.

19    Q.    Your balance goes a couple of months earlier is \$1.2  
20    million, \$1,218,486.05 and then went when the \$395,000  
21    comes out of your line of credit what's the now balance  
22    that's been borrowed against your line of credit?

23    A.    \$1,613,486.05.

24    Q.    During this period of time of October of '06 did you  
25    get any statement whether from the bank or Mr. Kenner or

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1 anybody, saying that you have drawn down \$1.6 million on  
2 your line of credit?

3 A. No.

4 Q. Other than you testified about the bonds statements,  
5 did you get anything indicating how much was borrowed?

6 A. I did not.

7 Q. And again, for clarity, when the bond, when you got  
8 your bond statements, did they come in monthly, quarterly?

9 A. They came monthly.

10 Q. Di they make any reference to the fact here is your  
11 balance, here is how much you earned for the last 30 days  
12 minus your loan, something like that?

13 A. No, it was just strictly a bond recorded, nothing  
14 about the line of credit.

15 Q. Now I showed you a document yesterday in which you,  
16 you authorized Mr. Kenner to have access to your line of  
17 credit, correct?

18 A. Correct.

19 Q. I think that I showed you this document, Government's  
20 Exhibit 2142, this is where you did that, correct?

21 A. Correct.

22 Q. And it's dated March 11, 2005?

23 A. Correct.

24 Q. And is this about the time that the line of credit  
25 was opened?

**M. Peca - Direct/Miskiewicz**

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1 A. It was.

2 Q. Going back to Government's Exhibit 2001, I want to  
3 focus your attention to one of the earliest transactions.  
4 April 4, 2005. That's, would you agree is three, three  
5 and a half weeks after what's on Government's Exhibit  
6 2142?

7 A. Yes.

8 Q. March 11th?

9 A. Yes.

10 Q. Do you see where there's a note increase, April 4,  
11 2005, do you see where I'm pointing to?

12 A. I do.

13 Q. How much is drawn down from your line of credit on  
14 that day about three and a half weeks after the line of  
15 credit is opened?

16 A. \$1,250,000.

17 Q. Did Mr. Kenner tell you that happened right after you  
18 opened the line of credit?

19 A. He did not.

20 Q. Did you have any documents provided to you that  
21 substantiated that your line of credit was in that amount?

22 A. No.

23 Q. I want to ask you a question, do you know Owen Nolan?

24 A. I do.

25 Q. Who is he?



**M. Peca - Direct/Miskiewicz**

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1 A. Owen Nolan was a professional hockey player, I was a  
2 teammate of his at the 2002 Olympics, in fact, we were  
3 roommates at the 2002 Olympics.

4 Q. On or about this time, April 4, 2005, did you owe  
5 Mr. Nolan \$1,250,000?

6 A. No, I did not.

7 Q. Did you intend to make a loan to Mr. Nolan of  
8 \$1,250,000?

9 A. No, I did not.

10 Q. Did you ever authorize Mr. Kenner to use your line of  
11 credit to pay \$1,250,000 to Owen Nolan?

12 A. No, I did not.

13 Q. When was the first time that you even knew that that  
14 happened?

15 A. Just now.

16 Q. Very briefly, a couple of days later, April 12, 2005,  
17 another note increase for looks like \$350,000, did you  
18 know that occurred?

19 A. I did not.

20 Q. At this stage your balance is \$1.6 million. What was  
21 the masks your line of credit?

22 A. 1.775 million.

23 Q. So virtually I mean all but about \$175,000 has  
24 already been borrowed against your line of credit,  
25 correct?

**M. Peca - Direct/Miskiewicz**

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1 A. Correct.

2 Q. Did you know that within approximately a month of  
3 opening the line of credit that virtually all of your line  
4 of credit was already committed?

5 A. I didn't know that.

6 Q. And I won't go through every single one here, but  
7 anywhere there was a note increase, meaning more money  
8 borrowed down, specifically for instance July 7, 2005,  
9 there seems to be another line here, another 120,000, now  
10 your balance is almost right at the red line. Did you  
11 know that was happening?

12 A. No.

13 Q. Are there any note increases here on this exhibit,  
14 2001, did you ever know that any of that happened?

15 A. I did not.

16 Q. And I guess I assume that means you don't know where  
17 the money went?

18 A. Apparently not.

19 Q. Now, on this line of credit, were you ever notified  
20 or did you ever get a notice regarding the status of the  
21 line of credit sent directly to you?

22 A. First one I received was when I was living in  
23 Columbus in 2008, 2009, I received a letter saying that  
24 the account was close to being in default.

25 Q. Okay. I show you what's now in evidence as

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1 government's -- I'm sorry.

2 Showing you with what's been marked for  
3 identification as Exhibit 716. (Handing.)

4 Showing you 716. Do you recognize that  
5 document?

6 A. I do.

7 Q. What do you recognize it to be?

8 A. A very shocking one.

9 MR. HALEY: I withdraw it.

10 Q. Just what do you recognize the document to be?

11 A. It's a letter from Northern Trust stating that  
12 basically my line of credit is close to being in default.

13 MR. MISKIEWICZ: Do you have any objection?

14 MR. HALEY: No objection.

15 MR. MISKIEWICZ: The government moves for the  
16 admission of Government Exhibit 716. Mr. La Russo?

17 MR. LA RUSSO: No objection.

18 THE COURT: 716 is admitted.

19 (Government's Exhibit 716 in evidence.)

20 Q. I'm not going to ask you to read the whole letter,  
21 but just so we generally see what is on here, could you  
22 read the date?

23 A. February 9, 2009.

24 Q. And what loan number is being referenced here?

25 A. 289369.

**M. Peca - Direct/Miskiewicz**

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1 Q. And that's same account number that we've been  
2 talking about, your line of credit account?

3 A. Yes.

4 Q. And who is it sent from if you can tell?

5 A. Aaron Mascarella, second vice president, Northern  
6 Trust.

7 Q. Okay. When you got this letter, did you contact  
8 anybody?

9 A. I immediately contacted Phil Kenner.

10 Q. And what, if anything, did he tell you about the  
11 letter?

12 A. He just reassured me that not to worry about it. He  
13 went on about Northern Trust started to behave badly and  
14 he'd take care of it. And he already made calls to the  
15 Bank of America to move my bond account to Bank of  
16 America.

17 Q. Did Northern Trust actually default or call you in  
18 default?

19 A. They did.

20 Q. And as a result, what, if anything, happened to your  
21 bond account that was the security, the collateral for  
22 that line of credit?

23 A. That bond account which essentially was our safety  
24 net was pretty much completely wiped out.

25 Q. How much money did you lose?

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1 A. It was just over 1.8 million.

2 Q. Now, there was another lawsuit, some sort of  
3 settlement with Northern Trust later on; is that correct?

4 A. Correct.

5 Q. And did you get some of that money back?

6 A. A portion of it, yes.

7 Q. But beyond what Mr. Kenner told you that morning when  
8 you called him, did you ever get any other explanation  
9 about why your line of credit was put into default in  
10 2009?

11 A. Never got an explanation to why it got to that point.  
12 The only explanation I got is he reassured me that the  
13 money was safe in the investment.

14 Q. But did he tell you in all these years, 2005, 2006,  
15 2007, 2000, where your money was going from your line of  
16 credit?

17 A. He did not. I assumed it was going to Hawaii, but I  
18 had no documentation to substantiate that.

19 Q. Other than him telling you it's safe, do you know  
20 what happened to your money?

21 A. I didn't, and it didn't make me feel any better.

22 Q. Now, I'm going to show you what's been also marked as  
23 Government's Exhibit 719 for identification. I'll just  
24 ask you to look at that. (Hanging.)

25 Do you recognize that document?

**M. Peca - Direct/Miskiewicz**

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1 A. I do.

2 Q. What do you recognize it to be?

3 A. It's authorizing Northern Trust to send all records  
4 to Phil Kenner's address.

5 Q. And who signed it?

6 A. I did.

7 Q. Why are you --

8 MR. MISKIEWICZ: The government moves for the  
9 admission of 719.

10 MR. LA RUSSO: I have no objection.

11 MR. HALEY: No objection, your Honor.

12 THE COURT: 719 is admitted.

13 MR. MISKIEWICZ: Thank you.

14 (Government's Exhibit 719 in evidence.)

15 Q. Showing you 719. This is -- is this before or after  
16 the letter that you just were discussing where you were  
17 told that you were about to be put into default, August  
18 2009?

19 A. I never checked the date on the last letter, sorry.

20 Q. Do you still have it in front of you?

21 A. I don't.

22 Q. Showing you 716. Is this a letter where you're  
23 notified that --

24 A. Yes.

25 Q. Your line of credit payments are overdue and you're

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1 in danger of being put in default?

2 A. Yes.

3 Q. What's the date of that?

4 A. February 9, 2009.

5 Q. And then is this about the time that you contacted  
6 Mr. Kenner?

7 A. It is, yes.

8 Q. And then subsequent to this letter you were actually  
9 put into default?

10 A. Correct.

11 Q. And you lost a portion of your savings?

12 A. Yes.

13 Q. And now in August of 2009, several months later, why  
14 are you -- well --

15 MR. MISKIEWICZ: If I may read it into the  
16 record, your Honor?

17 THE COURT: Okay.

18 MR. MISKIEWICZ: Please forward, I'll start from  
19 the beginning, August 10, 2009, Re: Michael Peca LOC  
20 number 289369, Dear Northern Trust, please forward all  
21 bank custody records for my LOC since its inception to the  
22 closing in early 2009. I had been a valuable client on  
23 the investment management side of your business, as well  
24 as the lending side for approximately five years, so I  
25 anticipate that you will deal about this request

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1 appropriately. Please have these records sent. One,  
2 electronically to Phil at Standardadvisors.com or by  
3 mail -- or 2, by mail to Standard Advisors, 10705 East  
4 Cactus Road, Scottsdale, Arizona.

5 Q. Who is Phil at Standardadvisors.com?

6 A. Phil Kenner.

7 Q. What was this address, 10705 East Cactus Road?

8 A. That's his personal residence.

9 Q. Is that also where he ran Standard Advisors out of?

10 A. I believe so.

11 Q. Why are you asking that your line of credit documents  
12 be sent to Mr. Kenner? This is August of 2009.

13 A. Because at that point I had no idea what transaction  
14 took place in the account, I had never seen any  
15 transaction reports from the account so this is a way for  
16 him to get them so that I could possibly see them in the  
17 future.

18 Q. Did you know whether or not he had them?

19 A. I assumed that he did get them from there. I didn't  
20 know that he was getting them during the time the life of  
21 the account.

22 Q. Do you recall whether or not he ever said anything to  
23 you about whether or not he had the line of credit  
24 transaction accounts, the things that we looked at earlier  
25 today?



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1 A. He did not. He did not tell me that he was getting  
2 them through the period.

3 Q. I'm sorry, I didn't hear the answer, I was talking  
4 over. Can I repeat that?

5 THE COURT: Sure.

6 Q. Can you repeat, did he tell you if he had the records  
7 in his possession or not?

8 A. I never got confirmation that he did.

9 Q. What, if anything, did he tell you?

10 A. Whenever I tried to see any documents, the only  
11 answer I ever got is that somebody broke into his house  
12 and stole them.

13 Q. And was that before or after you sent this letter  
14 August 2009?

15 A. Afterward.

16 Q. And prior to this, though, during that, from the  
17 moment you get that letter saying you're in danger of  
18 default through the default and the loss of money to the  
19 time that you send this letter in August of 2009, did you  
20 have any discussions with Mr. Kenner about whether or not  
21 he at that point possessed these lines of credit  
22 transaction records, the ones that you saw earlier today?

23 A. No.

24 Q. And I'm going to show you two documents, Government's  
25 Exhibit 717 and 718.

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1 MR. LA RUSSO: I have no objection.

2 MR. HALEY: Thank you.

3 MR. MISKIEWICZ: Do you have any objection?

4 MR. HALEY: No.

5 MR. MISKIEWICZ: Your Honor, the government  
6 moves for admission of government's 717 and 718 with the  
7 stipulation of both counsel.

8 MR. LA RUSSO: That's correct, your Honor.

9 THE COURT: Is that correct, Mr. Haley?

10 MR. HALEY: Yes, your Honor.

11 THE COURT: 717 and 718 are admitted.

12 (Government's Exhibits 717 and 718 in evidence.)

13 Q. Very briefly, are those the letters that you got when  
14 you were told that you were finally in default?

15 A. Yes.

16 Q. Now, I'll move on to a different subject. Mr. Peca,  
17 are you familiar with a company known as Eufora?

18 A. Yes.

19 Q. Tell the members of the jury how did you first hear  
20 about Eufora?

21 A. I first heard of Eufora around 2004 from Phil Kenner,  
22 Eufora was a prepaid credit card company which strength  
23 lied within their credit builder patent program which  
24 essentially allowed people to rebuild their credit through  
25 prepaid credit card.

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1 Q. Had you known who the owner of Eufora was?

2 A. I can't remember exactly if I was informed at the  
3 time, no.

4 Q. And did there ever come a time that you met a man by  
5 the name of Tommy Constantine?

6 A. Yes.

7 Q. How many times did you meet Mr. Constantine?

8 A. I've only met Mr. Constantine twice in person.

9 Q. Would you recognize him if you saw him again?

10 A. I would.

11 Q. Do you see him in the courtroom today?

12 A. Yes, he's sitting here about the blue suit and the  
13 light blue and navae blue tie.

14 MR. LA RUSSO: We'll stipulate to the  
15 identification.

16 MR. MISKIEWICZ: Thank you, your Honor.

17 THE COURT: The record will so note.

18 Q. Did there come a time that you decided to invest in  
19 Eufora?

20 A. Yes, sir.

21 Q. And what was, how much did you decide to invest in  
22 total over whatever period of time?

23 A. In total --

24 MR. LA RUSSO: I total apologize, Judge, may I  
25 ask one question or two to the witness? That's all I ask.

**M. Peca - Direct/Miskiewicz**

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1 Q. Can you put a time frame as to when did you first  
2 hear about Eufora from Mr. Kenner?

3 A. The first time was around 2004, where the initial was  
4 made in for 162,000 and then again in 2008 it was the  
5 initial \$200,000 investment, for a total of \$366,000.

6 Q. And did you -- how did the money get transferred to  
7 Eufora?

8 MR. LA RUSSO: Judge, I apologize, I know I  
9 shouldn't do this. I was just asking, he said he met him  
10 two times. I just wanted to know when those occurred. I  
11 wasn't so interested -- I'm sorry.

12 THE WITNESS: First time I meet Mr. Constantine  
13 was in my living room in May of 2009 and then the second  
14 time was the mediation in California in 2009.

15 MR. LA RUSSO: Thank you. I apologize for  
16 interrupting.

17 Q. So at the time that you made your investments in  
18 Eufora, you had not personally met him?

19 A. Correct.

20 Q. How did you send money to Eufora for investment?

21 A. Money was wired from my Schwab account into Eufora.

22 Q. And who executed those wires, if you know?

23 A. Phil Kenner.

24 Q. I'll show you what's been marked for identification  
25 as Government's Exhibit 753. (Handing.)

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1 Showing you what's been marked as 753. Just  
2 take a moment to look at that. (Pause.)

3 MR. LA RUSSO: No objection.

4 MR. MISKIEWICZ: With the stipulation of the  
5 parties, the government moves for the admission of  
6 Exhibit 753.

7 THE COURT: Correct?

8 MR. LA RUSSO: That's correct, your Honor.

9 THE COURT: Mr. Haley, is that correct? You're  
10 okay with the Exhibit 753 coming into evidence.

11 MR. HALEY: If offered by the government, yes,  
12 your Honor, no objection.

13 THE COURT: 753 is admitted.

14 (Government's Exhibit 753 in evidence.)

15 Q. Showing you on screen now 753, begins: Please wire  
16 on margin if necessary. Do you know what that means?

17 A. Say it again.

18 Q. It begins the very top of the page, it says: Please  
19 wire on margin if necessary.

20 Do you know what that means?

21 A. I don't.

22 Q. April 4, 2008 is the date and do you see the where  
23 it's being sent to, Charles Schwab. Does that make any  
24 reference to your account at Charles Schwab?

25 A. Yes. That was the custodian account.

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1 Q. And then the body of this letter instructions say  
2 dear Charles Schwab please wire \$100,000 using the  
3 following instructions. And it says Constantine  
4 Management Group, limited or Ltd, with a routing number,  
5 account number, and then a recipient I guess, Bank of  
6 America and an address in Phoenix, Arizona. Do you see  
7 all of that?

8 A. I do.

9 Q. And then at the bottom here, who sent that letter?

10 A. Phil Kenner.

11 Q. And did you read what it says regarding after it says  
12 thank you for your assistance comma, what does it say, if  
13 you can read it?

14 A. Phil Kenner as attorney in fact for Michael Peca or  
15 below that?

16 Q. That's it. Okay.

17 Now, at this time, 2008, did you authorize --  
18 did you have an agreement or an authorization with  
19 Mr. Kenner to wire transfer money in your behalf as part  
20 of his consulting or advisory position?

21 A. Yes.

22 Q. And where the money is going, the \$100,000, at this  
23 time April 4, 2008, you were investing in Eufora?

24 A. Correct.

25 Q. You said that there were a series of wire transfers.

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1 Do you know why there's \$100,000 of your money going to a  
2 company by the name of Constantine Management Group Ltd.?

3 A. I do not know that.

4 Q. Do you know what that is?

5 A. I do not know what it was.

6 Q. Do you know if it had any connection to Eufora?

7 A. I have no reason to think that it had any association  
8 with Eufora. I didn't even know that it was sent to  
9 Constantine Management Group at the time, so I couldn't  
10 draw that opinion.

11 Q. In this period, April 4, 2008 are any of the months  
12 thereafter in 2008, had you seen a copy of this wire  
13 transfer instructions?

14 A. No.

15 The first time that I had seen a copy of this  
16 wire instruction was when I finally had come to the  
17 conclusion that I had to start looking into stuff, and I  
18 requested my advisors to look into Schwab and get me all  
19 of my wire transfers from as early back as they can get  
20 them from the landlord, and when I noticed this I asked  
21 Phil Kenner right away why this went to Constantine  
22 Management Group.

23 Q. What did he tell you?

24 A. He wondered why I was asking.

25 Q. Did he ever tell you or make any explanation?

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1 A. He did not.

2 Q. Showing you what's been marked as Government's  
3 Exhibit 755 for identification.

4 MR. LA RUSSO: Your Honor, I apologize, could we  
5 just get a time frame when that conversation occurred.

6 THE COURT: Sure.

7 THE WITNESS: That conversation with Mr. Kenner?

8 MR. LA RUSSO: Yes, please.

9 THE WITNESS: I'm guessing it was around 2011,  
10 2012, in around there. Maybe a little later.

11 Q. Showing you what's been marked as Government's  
12 Exhibit 755 for identification. (Handing.)

13 Do you recognize 755?

14 A. I do.

15 Q. Do you recognize the signature there?

16 A. Yes. That's my signature.

17 Q. Did you send that letter?

18 A. I did.

19 MR. MISKIEWICZ: The government moves for the  
20 admission of 755.

21 MR. LA RUSSO: No objection, your Honor.

22 MR. HALEY: No objection.

23 THE COURT: 755 is admitted.

24 (Government's Exhibit 755 in evidence.)

25 MR. HALEY: I'm sorry. Can we have the date on



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1 that? Thank you.

2 Q. Showing you government's 755, could you just read --  
3 first of all, who are you sending this -- withdrawn.  
4 What's the date on this letter?

5 A. The date is May 12, 2009.

6 Q. Who are you sending the letter to?

7 A. Charles Schwab and Company.

8 Q. And just read the body of the letter, what are you  
9 asking Charles Schwab, the company, to do?

10 A. Please remove Philip Kenner as attorney in fact from  
11 the above referenced account.

12 Q. And that's your signature?

13 A. It is.

14 Q. So you said you guessed you asked to have him cut off  
15 I think you said in response to a question a little  
16 earlier, you guessed it was 2011. Is this what you're  
17 referring to, the 2009, is that when you asked that he be  
18 cut off?

19 A. It was.

20 Q. So it was a little bit earlier than 2011?

21 A. 2011 I started to inquire about some of the wire  
22 transfers made over the years and requested a copy from  
23 Phil.

24 Q. But you asked that Mr. Kenner no longer be given a  
25 power of attorney or attorney in fact?

**M. Peca - Direct/Miskiewicz**

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1 A. Correct.

2 Q. By the way, this is from you, correct?

3 A. It is. At the same time he was also removed as my  
4 trustee of my life insurance trust, things of that nature.

5 Q. During this period of time 2009 and on -- what is  
6 your relationship -- withdrawn.

7 How frequently are you meeting Mr. Kenner  
8 face-to-face?

9 A. In what time frame?

10 Q. Let's say from 2008 on for the 2000 -- let's say the  
11 year that you were in the grand jury, 2011?

12 A. The last time I seen Phil in 2010, prior to  
13 yesterday.

14 Q. Okay. And are you in communication with Mr. Kenner  
15 during that period of time?

16 A. There were periodic correspondences.

17 Q. Okay. And is this also a period of time in which you  
18 are either part of or advised of litigation going on?

19 A. No, I don't think so.

20 (Continued on next page.)

21

22

23

24

25

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1 Q It was latter?

2 A It was.

3 MR. MISKIEWICZ: Your Honor, I know it's a  
4 little early. May we take a break.

5 THE COURT: Sure. It's a little early but we'll  
6 take a 20-minute break.

7 (Whereupon, at this time the jury exits the  
8 courtroom.)

9 THE COURT: Be seated. Step down, Mr. Peca.

10 THE WITNESS: Thank you.

11 THE COURT: How much longer do you have on  
12 direct?

13 MR. MISKIEWICZ: Just about an hour.

14 THE COURT: Okay.

15 (Whereupon, a recess was taken.)

16 THE COURT: Please be seated. Bring in the  
17 jury.

18 (Whereupon, the jury at this time enters the  
19 courtroom.)

20 THE COURT: Continue, Mr. Miskiewicz.

21 MR. MISKIEWICZ: Thank you, your Honor.

22 Q Mr. Peca, I'm going to show you two more exhibits and  
23 I will ask you briefly to identify what those are.

24 Showing you Government's Exhibit 751 and 752 for  
25 identification.

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1 MR. MISKIEWICZ: Your Honor, the Government  
2 moves for the admission of 751 and 752 with the consent of  
3 the defendants.

4 MR. LARUSSO: That's correct, your Honor.

5 MR. HALEY: Yes, sir.

6 THE COURT: 751 and 752 are admitted as  
7 Governments' Exhibit.

8 (Whereupon, Government Exhibits 751 and 752 were  
9 received in evidence.)

10 Q Very briefly, Mr. Peca, the number, the monies  
11 reflected in those two exhibits are how much?

12 A One is for 166,000, the other is for 100,000.

13 Q Does that comport with at least part of your  
14 investment in Eufora?

15 A Yes, it does.

16 Q And the dates of those wire transfer instructions,  
17 was that about the time you were investing in Eufora?

18 A Yes, I did.

19 Q How much in total did you invest?

20 A 366,000.

21 Q And these two exhibits, 751 and 752, that's \$266,000?

22 A That's correct.

23 Q Where is that money going to?

24 A Eufora, LLC.

25 Q Okay. And before the break you were looking at

**M. Peca - Direct/Miskiewicz**

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1 something called Government's Exhibit 753. Where did that  
2 go?

3 A Constantine Management Group.

4 Q Was that I guess the third portion of your total  
5 investment that you intended to send to Eufora?

6 A Yes.

7 Q Did Mr. Kenner explain to you 100,000 out of what you  
8 said was a \$366,000 investment, went to not Eufora, but  
9 some other company?

10 A I did not receive an explanation.

11 Q I'd like to turn your attention to now something  
12 called the Global Settlement Fund which you spoke about  
13 briefly in the morning.

14 In or about 2009, did you have a meeting with  
15 the two defendants in this case, Mr. Constantine and  
16 Mr. Kenner?

17 A Yes, I did.

18 Q Where was that meeting?

19 A It was in our living room in a suburb of Columbus  
20 called Dublin, Ohio.

21 Q What was the purpose of that meeting?

22 A The purpose of the meeting was basically to lay out  
23 the strategy, moving forward on litigation against Ken  
24 Jowdy.

25 Q And at or about this time, now, have you already been

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1 notified of the default on your line of credit?

2 A I have been, yes.

3 Q And so for at least up until this time, had you  
4 received any return of your investment from the Hawaii  
5 deal?

6 A I have not.

7 Q And had you received any explanation about where the  
8 money went?

9 A I did not.

10 Q Why -- withdrawn.

11 So, what, if anything, did the defendant say to  
12 you at this meeting in your living room about going  
13 forward and suing or attacking or doing whatever,  
14 Mr. Jowdy?

15 A Well the conversation was basically carried by  
16 Mr. Constantine. Phil introduced Tommy and Phil had a  
17 very disheveled look as if he hadn't slept in weeks. So  
18 Tommy carried the conversation, first introduced himself,  
19 and gave us a bit of a background story on himself. It  
20 was the first time my wife and I met him, and that the  
21 main reason he was getting involved is because of an  
22 article that he was dragged into, an article about Phil  
23 Kenner which they also made mention of Tommy Constantine  
24 and some things in his part, and he felt some vengeance  
25 toward that, and felt he wanted to contribute to what we

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1 were not doing.

2 Q Did the name Global Settlement Fund come up?

3 A It did. Not initially. It kind of went out with,  
4 you know, laying the groundwork for it, explaining that  
5 Phil had to run his course for legal battles, and the  
6 basic premise rather than Phil continuing to go to people  
7 for 5,000 here, 10,000 there to help with some legal fees,  
8 it would be best if we had kind of put together a legal  
9 fund, Global Settlement Fund, which would then be used as  
10 a legal fund and the goal was to initiate litigation  
11 against Ken Jowdy.

12 We had a pending mediation in California about  
13 six or seven months after the date we met. But the whole  
14 purpose of it was and the thing that seemed intriguing to  
15 us especially after having just been notified of the  
16 default of our bond account, was there was going to be  
17 litigation against Ken Jowdy, we would file a civil  
18 lawsuit in California against Ken Jowdy. Hopefully that  
19 would provide enough leverage in mediation to get a  
20 settlement to our liking which was, I don't know the exact  
21 acreage, but it was the north western beach parcel of the  
22 Cabo Diamonte project.

23 What made it also more intriguing was Tommy had  
24 gotten on the phone with what he said was a guy all ready  
25 to purchase that parcel having been successful in

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1 mediation.

2 Q Let me ask you, when you say "Tommy," you mean the  
3 defendant Mr. Constantine?

4 A Correct.

5 Q He gets on the phone in front of you?

6 A Yes, in our living room. He gets on the cell phone  
7 and I guess it was about an 8 to 15 minute phone call,  
8 hard to remember how long it was exactly, but the purpose  
9 was to assure was there was going to be certain monies on  
10 the front end of the sale that had we acquired this  
11 property. And this gets to what made the whole thing  
12 interesting was this money coming up front, 15 to 20  
13 million dollars. He said to us that he was going to make  
14 us whole in every investment we ever made to Phil Kenner  
15 and himself.

16 Q He meaning who?

17 A Tommy Constantine.

18 Q Who was he talking to on the phone?

19 A I remember him saying the name. I don't recall who  
20 it was.

21 Q Did you hear the other end of the call?

22 A I didn't.

23 Q Do you know if he was even talking to anybody on the  
24 phone?

25 A I couldn't tell one way of the other.



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1 Q But this person that he was talking to on the phone,  
2 what, if anything, did he have to do with this -- with you  
3 getting any of your money back, what Mr. Constantine told?

4 A Apparently he was a big time real estate developer  
5 and he already agreed to if we were able to acquire that  
6 parcel of land through mediation with Mr. Jowdy, that this  
7 guy was already placing the purchase for an awful lot of  
8 money, and like I said in the front end, we were going to  
9 be made whole on all of our investments so you can imagine  
10 my kind of thoughts at the time, kind of realized that  
11 almost 2 million dollars was taken from our bank account.

12 Q After this meeting, at any point up until today, did  
13 you ever find out who this supposed real estate developer  
14 was who was ready to buy, you know, buy into this property  
15 and make you whole?

16 A No, I did not.

17 Q Anybody ever come along like that?

18 A No.

19 Q And, again, what, if anything, do you know, not  
20 because you were told by anybody, but that you know based  
21 on things that you saw or investigated on your own, what  
22 do you know Ken Jowdy has to do with your losses in  
23 Hawaii?

24 MR. HALEY: Objection, your Honor.

25 THE COURT: Sustained as to the form.

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1 Q Just based on your personal knowledge, what, if  
2 anything, did Mr. Jowdy have to do with your losses in  
3 Hawaii?

4 A Zero. I had never been told that he had any  
5 connections to Hawaii whatsoever.

6 Q But you are now being asked to contribute to a fund  
7 to sue Mr. Jowdy by the defendants?

8 A Correct.

9 Q And did they offer any explanation as to how Jowdy is  
10 somehow connected with your loss of almost \$2 million in  
11 your bond fund?

12 A No.

13 Q Had you been trying to find out that answer?

14 A Yeah, we had.

15 Q And when you tried to find out, who did you ask?

16 A We asked Phil.

17 Q Did you get any answer?

18 A No, sir.

19 Q So did you agree to participate in this Global  
20 Settlement Fund?

21 A We did.

22 I mean like I said with the end result being  
23 we'd be paid back in full but the other part that you now  
24 kind of played on us they said it would take every player  
25 to be involved or we weren't going to go through with it.

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1 Everybody single player had to be involved and  
2 Mr. Constantine said they just gone from Sergei Gonchar's  
3 house who was living in Pittsburgh at the time. I don't  
4 know if they met him in Pittsburgh or someplace else.

5 Tommy told the story how they made a spiritual  
6 bound because of the orthodox religion, Sergei was on  
7 board and wanted to know what to do, and other players  
8 were on board, and having that team's mind-set and our  
9 DNA, obviously didn't want to be the one person not to do  
10 it and we don't want to lose money so we agreed to go  
11 along with it.

12 Q How much did you contribute to this Global Settlement  
13 fund?

14 A \$250,000.

15 Q Showing you what has been marked for identification  
16 as Government's Exhibit 754.

17 MR. MISKIEWICZ: The Government moves for the  
18 admission of Government's Exhibit 754.

19 MR. LARUSSO: No objection.

20 MR. HALEY: No objection.

21 THE COURT: 754, in evidence.

22 (Whereupon, Government Exhibit 754 was received  
23 in evidence.)

24 Q In fact showing you Government's Exhibit 754 now in  
25 evidence, could you tell us what is the date of this piece

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1 of correspondence?

2 A May 8, 2009.

3 Q And where is it being sent to?

4 A It is being sent from Charles Schwab account to First  
5 Century Bank.

6 Q How much is being sent?

7 A \$250,000.

8 Q Who is the beneficiary in that First Century Bank  
9 account?

10 A The law offices of Ronald Richards and Associates.

11 Q Is that the same lawyer that represented you in the  
12 grand jury testimony you spoke about earlier today?

13 A Yes, it was.

14 Q At this point had you even met Mr. Richards?

15 A No.

16 Q Other than Mr. Kenner, did you know anything about  
17 Mr. Richards?

18 A No, I did not.

19 Q And who is actually signing the authority to send  
20 this?

21 A Phil Kenner.

22 Q And now, first of all, other than what the defendants  
23 told you did you know whether or not other people  
24 contributed to this fund, other players?

25 A Not at the time, no. I had no confirmation.

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1 Q And as you sit here today, do you know whatever  
2 happened to that money?

3 A I have ideas but I don't know for certain.

4 Q And have you been made whole by some sort of lawsuit  
5 or something like that?

6 A No, sir.

7 Q And you appeared in the grand jury, this is 2009, you  
8 appeared in the grand jury in 2011.

9 Again, did the money that was paid Mr. Richards,  
10 Attorney Richards in 2011 for your grand jury appearance,  
11 did that come out of this fund or did it come out of your  
12 pocket?

13 A Came out of my pocket.

14 When I called Mr. Richards prior to the grand  
15 jury when he requested \$8,000 to make the trip to New  
16 York, I asked him why he can't pull it from the Global  
17 Settlement Fund and he indicated to me there is no more  
18 money in the Global Settlement Fund.

19 Q Now, shortly after the wire transfer, did you receive  
20 an e-mail from either of the defendants about your  
21 \$250,000?

22 A Yes.

23 Q I show you what is marked for identification as 757.

24 Showing you for identification 757, do you  
25 recognize that document?

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1 A I do.

2 Q What do you recognize it to be?

3 A Just a confirmation on --

4 Q Just what kind of a document is it?

5 A It's an e-mail.

6 Q Who is the recipient?

7 A Sent to myself and my wife from Phil Kenner.

8 Q And do you recall getting this e-mail?

9 A I do.

10 Q And do you recall either saving it or seeing it  
11 later?

12 A Yes.

13 Q Printing it out?

14 A Yes.

15 MR. MISKIEWICZ: Government moves for the  
16 admission of 757.

17 MR. LARUSSO: No objection, your Honor.

18 MR. HALEY: Very brief voir dire, Judge.

19 VIOR DIRE EXAMINATION

20 BY MR. HALEY:

21 Q Mr. Peca's e-mail address, KMPGP@aol.com, that is  
22 your e-mail address?

23 A My wife's e-mail address.

24 Q I see. Do you share that e-mail address with your  
25 wife?

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1 A No, sir.

2 MR. HALEY: May I have one quick moment, Judge?

3 Q KMPGP@aol.com, as you indicated a moment ago was your  
4 wife's e-mail address?

5 A Primarily her e-mail address, correct.

6 Q Do you know if an e-mail was sent to small  
7 kmpgp@aol.com that was also received by him?

8 A It's the same e-mail.

9 Q This is all caps. If it wasn't all capped, would she  
10 get it?

11 A I don't know if it is case sensitive or not. When we  
12 send them or get them they are not capitalized.

13 Q Sir, did you ever receive at any point in time an  
14 e-mail from Michael Stolper, to the best of your  
15 knowledge?

16 A Yes.

17 MR. HALEY: I have no further questions and no  
18 objections.

19 THE COURT: 757 is admitted.

20 MR. MISKIEWICZ: Thank you.

21 (Whereupon, Government Exhibit 757 was received  
22 in evidence.)

23 BY MR. MISKIEWICZ:

24 Q Showing you 757 on the screen now.

25 First of all what is the date of this e-mail?

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1 A Monday, May 18, 2009.

2 Q And who it is from?

3 A From Phil Kenner.

4 Q This e-mail address, kenner33@gmail, do you recall  
5 communicating with Mr. Kenner using that e-mail during the  
6 years you were associated with him?

7 A One of them, yes. Primarily the e-mail address.

8 Q Is this addressed to Michael and Kristin, obviously  
9 you are Michael.

10 Kristin is who?

11 A My wife.

12 Q Can you just read into the record -- well, did you  
13 agree the first sentence has to do with the fact that  
14 \$250,000 is being sent to Attorney Ron Richards, correct?

15 A Yes.

16 Q That is a wire transfer that you just looked at a  
17 little while ago, correct?

18 A Correct.

19 Q That was a wire transfer that was sent May 8, 2009?

20 A Correct.

21 Q Here ten days later, could you read "in addition,"  
22 from that point on? Can you just read from "in addition"  
23 for the record?

24 A In addition to the fund paying for various legal  
25 fees, PR Agency fees, as well as other protective advances



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1 and settlement costs, you will be receiving transfer of  
2 membership agreements from Tommy for your acquisition of  
3 additional interest in Eufora, LLC, as well as your new  
4 LLC and operating agreements reflecting your ownership  
5 interest in the Avalon Airpark Real Estate project, the  
6 Falcon 10 aircraft, and the two Palms Place condominium  
7 units. You may not recall Tommy or I mentioning the Palms  
8 units in our conversation.

9 In any case, because Moreau and Tommy settled  
10 that case as part of the Global Settlement, he has  
11 graciously elected to include you as a beneficiary in the  
12 settlement equity [sic]--

13 THE COURT: You said settlement equity.

14 THE WITNESS: I'm sorry -- significant equity  
15 that exists in those two units as part of this  
16 transaction. As we discussed rather than throwing money  
17 away only on legal fees this strategy which effectively  
18 acquires significant assets, while providing a legal  
19 remedy, is by far our best solution."

20 Q And then it asks for you to acknowledge and approve  
21 something?

22 A Yes.

23 Q And you did, correct?

24 A Correct.

25 Q And in fact the money was already sent before you got

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1 this?

2 A Correct.

3 Q During that meeting -- withdrawn.

4 This appears to be saying that in addition to  
5 hiring this lawyer to fight Ken Jowdy, you are also going  
6 to get additional interest in Eufora.

7 Did you want additional interest in Eufora?

8 A We had just recently I think acquired interest the  
9 year before in Eufora. The whole discussion with a lot of  
10 this stuff, was maybe two minutes of an hour-long  
11 conversation. It was presented as more of an incentive  
12 that money actually being paid towards settling other  
13 peoples' claims.

14 Q Okay. When you say you had already acquired an  
15 interest a year earlier in Eufora that is the \$366,000 you  
16 were talking about earlier?

17 A Correct, the additional 200,000.

18 Q The meeting in your living room did Mr. Constantine  
19 explain to you why -- withdrawn.

20 In that meeting in your living room did either  
21 Mr. Constantine or Mr. Kenner explain why \$100,000 out of  
22 your \$366,000 investment in Eufora went to something  
23 called Constantine Management Group?

24 MR. HALEY: Your Honor, I object to the leading  
25 nature. I object to the leading nature.

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1 THE COURT: You can't ask that question in a  
2 non-leading way, so I'll allow that.

3 A Repeat the question.

4 Q In that meeting in your living room with Mr. Kenner  
5 and Mr. Constantine, did either one of them explain or  
6 tell you why 100,000 out of your 366,000 investment in  
7 Eufora, went to a company called Constantine Management  
8 Group?

9 A No, at that point I still had no knowledge that it  
10 was the Constantine Management Group.

11 Q This letter or e-mail letter, Government's  
12 Exhibit 757, also says you will also be getting ownership  
13 interest in the Avalon Airpark Real Estate Project.

14 Did you want ownership interest in something  
15 called Avalon Airpark Real Estate Project?

16 A As an incentive to do it, it didn't bother me but our  
17 money -- we weren't told our money was going to be used to  
18 do that, to acquire an airpark.

19 Q Well, okay.

20 So ten days earlier you sent a quarter of a  
21 million dollars to a lawyer. What, if anything, did  
22 you -- how much of that \$250,000 did you want to be split  
23 off to go to, I don't know, this Avalon Airpark when you  
24 sent the money ten days earlier?

25 A The Global Settlement Fund was built as a legal fund.

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1 That was the main premise of the Global Settlement Fund.

2 Q But did you want anything to do with this Avalon  
3 Airpark?

4 A No, because it was proposed out of the \$250,000,  
5 \$30,000 of your money will go to this, \$20,000 would go to  
6 anything else, we wouldn't have done it. It was proposed  
7 as a legal fund.

8 Q By the way, at this point did you even know what  
9 Avalon Airpark was?

10 A He had first made mention of it that day.

11 Q But had you looked at it? Did he show you books and  
12 records, show you a prospectus, anything, something about  
13 the nature of this business?

14 A No.

15 Q When I say "he," I mean Mr. Constantine?

16 A Correct.

17 Q Is it fair to say Mr. Constantine did most of the  
18 talking during this meeting?

19 A He did all the talking.

20 Q And continuing in this e-mail letter, it says you  
21 will also be getting ownership interest in the Falcon 10  
22 aircraft.

23 Did you want an aircraft?

24 A I had no need for an aircraft, no.

25 Q And the two Palms Place condominium units, did you

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1 have any desire to have condominiums units in someplace  
2 called Palms?

3 A That was never discussed in the meeting those units.  
4 The only thing regarding the Palms was discussed Tommy  
5 made mention that he was my partner in the penthouse in  
6 the Palms and that was the first I had known of it because  
7 Phil claimed he was the partner at the penthouse at the  
8 Palms. It was an entertaining moment for me at the time  
9 but the only mention of the Palms.

10 Q Aside from Hawaii, you had made other investments and  
11 one was them was condominiums in the Palms?

12 A Yes.

13 Q The Palms is where?

14 A In Las Vegas.

15 Q You made those investments through Mr. Kenner?

16 A Correct.

17 Q Do you know if he's talking here, Mr. Kenner, about  
18 the condominium units that you've already purchased or is  
19 he talking about two more units?

20 A He's talking about units that involved a different  
21 player, not myself.

22 Q So at this time, May 18, 2009, did you already, you  
23 and your wife already have an investment in this penthouse  
24 condominium unit in the Palms, the Palms Hotel in Las  
25 Vegas?

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1 A Yes.

2 Q That was a bad question.

3 Did you on or about this date already have an  
4 ownership interest in some condominium units?

5 A We did. It was a penthouse in the Palms Place in Las  
6 Vegas.

7 Q When he's talking about the two condominium units,  
8 you said a moment ago, this was with other people. Did  
9 you have any desire to buy two more units?

10 A No, like I said it was never discussed at the meeting  
11 that these units were even discussed.

12 Q And just to make sure it is absolutely clear. When  
13 you sent your quarter of a million dollars ten days prior  
14 to this to Ron Richards, did you have any expectation or  
15 desire to have some portion of that quarter of a million  
16 split off to go to condo units in Las Vegas?

17 A No, sir.

18 Q Would you have made that wire transfer of a quarter  
19 of a million dollars if you thought some of your money  
20 would end up buying some condo unit?

21 A I would not have.

22 Q Would you have sent a quarter of a million dollars if  
23 you knew some of your percentage would end up giving you  
24 some sort of a Falcon 10 aircraft?

25 A I would not have.

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1 Q And would your answer be the same if you thought part  
2 of your quarter of a million dollars would get you more of  
3 an equity interest in Eufora?

4 A I mean it was proposed that way. I mean the way it  
5 was for 250,000 there will be a legal fund and things were  
6 going to get settled and Juneau was settled, Moreau was  
7 settled, they never mentioned that this money would be  
8 used to settle these claims, that as an incentive we would  
9 acquire their percentages.

10 Q By the way, I think you testified earlier that you  
11 don't know what happened to any litigation. If the  
12 litigation, if there was any litigation, did it result in  
13 you're being made whole or part whole in your investments  
14 in Hawaii?

15 MR. HALEY: Objection, your Honor. That calls  
16 for a yes or no answer, not the introduction of hearsay as  
17 the outcome of previous lawsuits. That's my objection.

18 THE COURT: Sustained.

19 Q More to the point though, did you ever see any refund  
20 or return on investments in Eufora, the Airpark, the  
21 Falcon 10 or the Palms units that were discussed in this  
22 letter?

23 A Nos, for all of them.

24 Q And did you get any explanation from either  
25 Mr. Kenner or Mr. Constantine about where your quarter of

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1 a million dollars went?

2 A We did not.

3 Q You identified earlier, and it's in the record, that  
4 you sent Schwab a letter, Government's Exhibit 755, on  
5 May 12, 2009, asking that Mr. Kenner be removed as  
6 attorney-in-fact from your Schwab account, correct?

7 A Correct.

8 Q I'll put a couple different dates here together.

9 May 8th, that's when you put the quarter of a  
10 million dollars or sent a quarter of a million dollars or  
11 authorized a quarter of a million dollars to be sent to  
12 Ron Richards, correct?

13 A Yes.

14 Q A few days later, May 12th, you are stopping  
15 Mr. Kenner to be attorney-in-fact, correct?

16 A Correct.

17 Q And on May 18th, you are nevertheless acknowledging  
18 that you got this letter and you are going along with the  
19 fact that your monies are already gone, really. Why did  
20 you do it?

21 A I mean the plan itself, I mean at this point there's  
22 so much money missing. And for us to have an opportunity  
23 to recover some of that money, there's an element of  
24 desperation --

25 Q And --



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1 MR. HALEY: He's not finished, your Honor.

2 THE COURT: Let him finish.

3 MR. HALEY: Continue.

4 A -- To have earned that much money and to have an  
5 opportunity to recover, as Tommy phrased it, we be made  
6 whole in everything, was enough for us to agree to it.

7 Q Did Mr. Kenner do anything, say anything to you to  
8 make you feel desperate?

9 A I don't think anything was said to make us feel  
10 desperate, necessarily, but, you know, having a lot of  
11 investments with no paper trail, no documentation, nothing  
12 in writing, and to know he's the singular source to know  
13 where all those investments went, all the money went, he's  
14 the only one that had the answers.

15 Q Did he ever say anything to you along those lines?

16 A Yes, several times.

17 Q What did he say to you?

18 A He would just say if he decided at any point that he  
19 stopped fighting for our cause, then nobody would ever get  
20 their money back.

21 Q Did you feel like you really had any option other  
22 than to contribute a quarter of a million dollars at this  
23 stage?

24 MR. HALEY: Objection, your Honor.

25 THE COURT: Sustained.

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1 Q Going to the last topic.

2 Did there ever come a time you began to tape  
3 record conversations with Mr. Kenner?

4 A Yes.

5 Q Why did you do that?

6 A Because I wanted to get answers and as often as I  
7 tried it was difficult to get answers, so if there was any  
8 way that I could get him to admit to something that I  
9 could have for my own satisfaction, I guess, I was trying  
10 to do that.

11 Q All right.

12 And let me show you what has been marked for  
13 identification as Government's Exhibit 505, a compact  
14 disk. I'll show you this.

15 Do you recognize that disk?

16 A I do.

17 Q How do you recognize it?

18 A I have initialed and dated it.

19 Q Do you know what is inside or what is recorded on  
20 that disk?

21 A Yes, a couple conversations on it.

22 Q Was that couple conversations, conversations you  
23 reported with one of the defendants?

24 A Conversations between myself and Phil Kenner.

25 Q And were you able to listen to all of the

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1 conversations that you recorded?

2 A Yes.

3 Q In fact have you listened to those conversations over  
4 many hours?

5 A Yes.

6 Q Okay. And did you do anything or change, edit in any  
7 way, the conversations?

8 A I did not.

9 Q Okay. Now what is on that compact disk. Is that the  
10 total of many hours of conversations or are those  
11 selections?

12 A Just selections.

13 MR. MISKIEWICZ: Government moves for the  
14 admission of 505.

15 THE COURT: Any objection?

16 MR. LARUSSO: No, your Honor.

17 MR. HALEY: Brief voir dire, Judge?

18 THE COURT: Yes.

19 VIOR DIRE EXAMINATION.

20 BY MR. HALEY:

21 Q Sir, how many hours of conversation did you and/or  
22 your wife record between yourself and Phil Kenner?

23 A Best guess, four to seven hours worth of  
24 conversation.

25 Q If I would suggest six hours, would that be about

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1 right?

2 A Seems like the median.

3 Q And this disk represents, just so we know, what  
4 portion of those conversations in terms of time: Ten  
5 minutes, two hours, this particular disk?

6 A This particular disk is anywhere from 30 seconds to a  
7 minute.

8 Q So before your appearance here today you listened to  
9 this disk; is that correct?

10 A Correct.

11 Q Before your testimony today, did you listen to all  
12 six hours of conversations, approximately?

13 A I've listened to the extent of it for years.

14 MR. HALEY: At least it's clear, Judge. I have  
15 no objection to the admissibility of that disk.

16 THE COURT: 505 is admitted.

17 (Whereupon, Government Exhibit 505 was received  
18 in evidence.)

19 BY MR. MISKIEWICZ:

20 Q I would like to show you what has been marked for  
21 identification as Exhibits 505.1.2.3.4-T.

22 Have you seen those four exhibits before?

23 A I have.

24 Q What are they?

25 A They are the excerpts of the conversations on the

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1 disk.

2 Q When you say "excerpts," you mean excerpts of the  
3 conversations or transcripts?

4 A Transcripts.

5 Q And did you have an opportunity to listen to the  
6 transcripts, follow the transcripts and listen to the  
7 audio at the same time?

8 A I did.

9 Q And are you satisfied that what is on the transcripts  
10 is correct and accurate transcriptions of what the audio  
11 is?

12 A They were.

13 MR. MISKIEWICZ: Your Honor, for the limited  
14 purpose of what is permitted under the rules, we would ask  
15 to publish now the audio as well as the transcription.

16 THE COURT: Repeat those numbers again?

17 MR. MISKIEWICZ: The disk is 505 and the  
18 transcripts are 505.1-T, 501.2-T, 505.3-T, 505.4-T.

19 THE COURT: Any objections to those exhibits  
20 being utilized?

21 MR. LARUSSO: No, your Honor.

22 MR. HALEY: No, but a brief voir dire on that.

23 THE COURT: Yes.

24 (Whereupon, Government Exhibit 505, 505.1-T,  
25 501.2-T, 505.3-T, 505.4-T was received in evidence.)

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1 VIOR DIRE EXAMINATION

2 BY MR. HALEY:

3 Q Mr. Peca, who recorded those conversations?

4 Did you record these conversations or did your  
5 wife record them?

6 A My conversations with Phil Kenner, I recorded the  
7 conversations.

8 Q And these only involve your conversations with Phil  
9 Kenner, correct?

10 A Correct.

11 MR. HALEY: Fine, your Honor. Thank you.

12 THE COURT: Let me give an instruction to the  
13 jury to explain the limited purposes of these  
14 transcriptions being utilized.

15 The transcripts themselves are not being  
16 admitted into evidence, they are simply an aid that the  
17 Government is allowing to utilize to provide to the jury  
18 as you are listening to a recording, but the instruction I  
19 want to give you is that they are just an aid to the jury  
20 and you're listening to the recording, it's obviously in  
21 English, and if you hear something different than what is  
22 on the transcript, it is what you hear that controls, not  
23 what is on the transcripts.

24 It's just an aid. Okay.

25 BY MR. MISKIEWICZ:

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1 Q Mr. Peca, do you recall the date you recorded this?

2 A It was July.

3 Q I will show you Exhibit 505. Would that refresh your  
4 recollection of the date you made this recording?

5 A Yes, July 12th of 2012.

6 Q Okay. Now that portion of the recording corresponds  
7 to the 505.1-T.

8 (Audio clip played.)

9 The very beginning, who is speaking?

10 A Myself.

11 Q And the second voice, who responded to you?

12 A Phil Kenner.

13 Q And on or about this date, in July of 2012, had you  
14 seen that \$395,000 wire that we talked about earlier this  
15 morning to something called Led Better?

16 A I had not.

17 Q Did you have any knowledge of it?

18 A I do not.

19 Q I'll play for you what corresponds to 505.2-T.

20 (Audio clip played.)

21 Q Again, in July of 2012, at about the time of this  
22 recording, did Mr. Kenner ever detail to you where your  
23 money went?

24 A He did not.

25 MR. HALEY: Judge --

**M. Peca - Direct/Miskiewicz**

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1 MR. MISKIEWICZ: I'll play for you now an audio  
2 clip that corresponds to the 505.3.

3 (Audio clip played.)

4 Q Now this is after your appearance in the grand jury,  
5 correct?

6 A Yes, correct.

7 Q By that time in 2011 you had already -- at that point  
8 you had learned that some money supposedly went to Ken  
9 Jowdy in Mexico, correct?

10 A I had no confirmation but I was led to believe so,  
11 yes.

12 Q All right.

13 And lastly I'll play the audio clip that  
14 pertains or corresponds to 505.4.

15 (Audio clip played.)

16 MR. MISKIEWICZ: May I have a moment, your  
17 Honor?

18 THE COURT: Yes.

19 MR. MISKIEWICZ: No further questions.

20 THE COURT: Okay. Cross-examination.

21 MR. HALEY: Yes, sir.

22

23

24

25



**M. Peca - Cross/Haley**

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1 CROSS-EXAMINATION

2 BY MR. HALEY:

3 Q Mr. Peca, my name is Rick Haley. I represent Phil  
4 Kenner.

5 I would like to begin, sir, with the last  
6 exhibit that the Government was showing you, Exhibit 757,  
7 which is involving that e-mail between Kenner and yourself  
8 on May 18, 2009.

9 You certainly recall that exhibit?

10 A I have it in front of me.

11 Q I'm sure you recall the series of questions from  
12 Mr. Miskiewicz regarding whether or not you would have  
13 made the decision to contribute \$250,000 to the Global  
14 Settlement Fund if you were aware of all those other  
15 representations as set forth in that e-mail. Do you  
16 recall those series of questions?

17 A I do.

18 Q Now, \$250,000 was sent how many days prior to that  
19 May 18th e-mail?

20 A I think it was ten days, maybe. I don't remember  
21 exactly. It was around ten days, I think.

22 Q And I take it, sir, by your testimony based upon when  
23 you had been previously told by Phil Kenner and/or Tommy  
24 Constantine, as to the use of your 250, you were  
25 surprised, upset, disturbed by that e-mail; is that

**M. Peca - Cross/Haley**

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1 correct?

2 A I wouldn't say disturbed or upset. I would classify  
3 it more as they were going over the things that we had  
4 talked about in a different way like I said in the meeting  
5 itself, this represented maybe three minutes of the  
6 conversation which took over an hour.

7 Q I understand that, sir, but now that three minutes is  
8 encapsulated in this paragraph. So now you are faced with  
9 specific representations in writing as to what was going  
10 to happen with your 250, correct?

11 A Correct.

12 Q And what if any actions did you take having received  
13 that e-mail to recover that \$250,000 that you had  
14 previously contributed to the Global Settlement Fund by  
15 deposit into Ron Richards' account. What did you do?

16 A We didn't do nothing [sic.

17 Q Well, did you contact Phil Kenner after you received  
18 that e-mail from him and have a conversation with him in  
19 substance, hey, Phil, whoa, whoa, whoa, I gave you a  
20 quarter of a million dollars which Mr. Miskiewicz  
21 highlighted and I'm looking at this e-mail and you know  
22 that is not really my idea based upon what you told me as  
23 to what this money was going to be used for.

24 Did you have that kind of conversation? Yes or  
25 no?

**M. Peca - Cross/Haley**

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1 A Yes.

2 Q And when did that occur?

3 A Absolutely after when we seen this e-mail we had a  
4 follow-up, I can't remember if it was an e-mail or a  
5 conversation, saying we didn't remember some of this stuff  
6 as it was explained in the e-mail.

7 Q I see. That e-mail hasn't been introduced in  
8 evidence yet, right?

9 MR. MISKIEWICZ: Objection.

10 MR. HALEY: I withdraw the question.

11 Q Was that a conversation, sir, or was that an e-mail?

12 A I don't recall.

13 Q But I take it whatever you say he told you in  
14 response to that e-mail and that conversation, assuaged  
15 you. Correct, sir?

16 A I guess so.

17 Q You testified on direct that there came a point in  
18 time where you had a telephone conversation with Phil  
19 Kenner concerning the line of credit records that you  
20 claimed that you had not been receiving over the years,  
21 correct?

22 A I never had a conversation with him about the line of  
23 credit detailed documents. I never had a conversation  
24 with him about those.

25 Q Well, did you testify, sir, on direct that there came

**M. Peca - Cross/Haley**

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1 a point in time where you were concerned about what  
2 happened with your line of credit in terms of the  
3 transaction history, you contacted Phil Kenner to obtain  
4 those records? Do you remember testifying to that on  
5 direct?

6 A I never contacted Phil Kenner about the details of  
7 that. I sent an e-mail authorizing or I signed off on him  
8 getting authorization to get those documents.

9 Q Did you or did you not testify on direct that there  
10 came a point in time where you contacted Phil Kenner to  
11 obtain the line of credit records in his possession and he  
12 told you somebody broke into my house and stole them.

13 Do you remember that conversation?

14 A Now you rang a bell. Yes, I do remember that.

15 Q Time-frame that for us. When do you say that that  
16 conversation took place?

17 A I can't remember exactly.

18 Q Well, 2005, 2006, 2007?

19 Give us a time frame, sir?

20 A I would say between 2008 and 2011.

21 Q Three years span. All right.

22 Did you believe him when Phil said someone broke  
23 into my house and stole your LLC records. Did you believe  
24 him?

25 MR. MISKIEWICZ: Objection.

**M. Peca - Cross/Haley**

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1 MR. HALEY: This is cross-examination.

2 I apologize, Judge.

3 THE COURT: I'll allow that. Go ahead.

4 A Phil had a way of being very persuasive in the things  
5 he was saying. He made it seem like he had a lot of  
6 enemies at the time. There was a lot of people whether it  
7 was business associates that were out to get him, so to  
8 speak. So he says that documents that I had wanted, he  
9 said somebody broke into his house and stole them.

10 Q So your answer is when he said somebody broke into my  
11 house and stole your line of credit transaction history  
12 records, you believed him?

13 A I don't think it is as much that I believed him,  
14 rather that I knew I wasn't going to get an answer, a  
15 proper answer.

16 Q Well, armed with that knowledge that you were not now  
17 going to get a proper answer from Phil Kenner, your  
18 business manager, whatever you want to characterize it, I  
19 take it at that point in time you had no further contact  
20 with him. Is that true?

21 A No, we did.

22 Q Well, did you continue to authorize the monthly  
23 payment that was going to come out of your account for the  
24 business management services he was providing to you after  
25 that conversation?

**M. Peca - Cross/Haley**

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1 A I don't believe I did.

2 Q But you are not sure, are you?

3 A Correct.

4 Q Okay. You were interviewed by the FBI prior to your  
5 testimony today, correct?

6 A Correct.

7 Q Do you recall on how many occasions?

8 A Uhm, two, I believe.

9 Q Let me see if I can refresh your recollection.

10 MR. MISKIEWICZ: Objection. He didn't say he  
11 needed his reduction refreshed.

12 MR. HALEY: I believe so, Judge.

13 THE COURT: Go ahead.

14 Q Do you recall being interviewed by the FBI on three  
15 occasions?

16 A Well, two for sure. Possibly three.

17 Q All right.

18 MR. HALEY: May we have these documents marked  
19 simply for identification, Judge?

20 THE COURT: Yes.

21 MR. HALEY: Your Honor, I apologize. You don't  
22 know sometimes what document you'll be needing.

23 THE COURT: Okay.

24 MR. HALEY: Thank you.

25 Q Sir, would you kindly take a look, and take your

**M. Peca - Cross/Haley**

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1 time, we'll put them in sequence, what is marked Kenner  
2 Exhibit 8, 9 and 10, only for identification, and take  
3 your time.

4 MR. MISKIEWICZ: Counsel, may I see your  
5 exhibits. We have different numbers.

6 (Counsel confer.)

7 Q Sir, did you have a chance to look at those three  
8 documents?

9 A Yes, sir.

10 Q Does that serve to refresh your recollection as to  
11 the number of times you were interviewed by the FBI?

12 A Yes, it does.

13 Q Does that serve to refresh your recollection as to  
14 the dates those interviews took place?

15 A Yes.

16 Q What were those dates?

17 A The first one would be September 30, 2009. The  
18 second one would be February 22, 2012. The third one  
19 would be September 6, 2013.

20 Q During the course of those three interviews with the  
21 FBI, at any point in time did you ever tell the FBI that  
22 Phil Kenner once told you that your line of credit records  
23 were stolen from his home?

24 A I don't believe I did.

25 Q Now, your initial relationship with Phil Kenner began

**M. Peca - Cross/Haley**

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1     when, sir?

2     A     Approximately '96, '97.

3     Q     Did there come a point in time, sir, that there was a  
4     document executed between you and Phil Kenner known as the  
5     Standard Advisory Agreement?

6     A     There might have been. I don't recall. Maybe.

7                 MR. HALEY: Your Honor, that is a Government's  
8     Exhibit already introduced in evidence. If I could see  
9     it, the Standard Advisory Agreement.

10                (Counsel confer.)

11    Q     Well, do you recall, sir, executing a document known  
12    as a Standard Advisory Agreement that set forth the  
13    relationship between you and Phil Kenner as it relates to  
14    the business management of your affairs?

15    A     I don't remember the day it happened but I'm sure it  
16    did.

17    Q     Wasn't that the agreement by which there would be the  
18    monthly compensation for Phil Kenner in connection with  
19    managing your portfolio, your assets, correct?

20    A     Possibly, yes.

21    Q     Do you remember in that agreement whether or not  
22    there was a provision that would permit you, should there  
23    be a dispute between yourself and Phil Kenner as relates  
24    to the management of your business affairs by him, where  
25    you could proceed to arbitration?



**M. Peca - Cross/Haley**

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1 A Correct, in the state of Arizona.

2 Q And did you ever throughout any of these disputes  
3 with Phil Kenner, seek to utilize that arbitration  
4 provision? Yes or no?

5 A No.

6 Q Now, you say that the erosion of your business  
7 relationship began about 2007-2009; is that correct?

8 A It sounds accurate.

9 Q And prior to that point in time you and Phil Kenner  
10 and your wife had a very close relationship?

11 A Very much so.

12 Q You would visit with he and his wife or girlfriend?

13 A Only one time.

14 Q And that was in Arizona?

15 A Correct.

16 Q Did they ever visit you, sir, in your home?

17 A The family, no.

18 Q I see. Did Phil?

19 A Phil did, yes.

20 Q At any point in time, sir, did you know Phil Kenner  
21 to forge your signature?

22 MR. MISKIEWICZ: Objection.

23 THE COURT: That's okay. Overruled.

24 A I wouldn't know.

25 Q Well, did you ever see Phil Kenner in your presence

**M. Peca - Cross/Haley**

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1 practicing forging another person's signature? Yes or no?

2 A No.

3 Q Did Phil Kenner ever ask you to simply sign a blank  
4 piece of paper that -- for your name?

5 A Not that I recall.

6 Q Now, sir, you said that in your initial involvement  
7 with Phil Kenner, the program that he was proposing to  
8 you, was exactly what you wanted, that is to say -- when I  
9 say "program," the financial portfolio, it would be stocks  
10 and bonds; is that correct?

11 A And I wouldn't classify it exactly what I wanted  
12 because I didn't know exactly what was best suited for me.  
13 It seemed the logical first step for me investing.

14 Q And you had an understanding that stocks and bonds  
15 returned a particular rate of interest?

16 A One way or the other, correct.

17 Q Now, there came a point in time you signed with the  
18 New York Islanders, true?

19 A Correct.

20 Q Sir, you said as I recall on your direct testimony  
21 that when you signed the five-year contract with the New  
22 York Islanders, "I made a lot of money." Correct?

23 A Yes.

24 Q How much?

25 A It was a five-year, \$20 million contract.

**M. Peca - Cross/Haley**

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1 Q And you went to the New York Islanders presumably as  
2 a result of that financial incentive?

3 A No. They traded for my rights. I was traded to the  
4 New York Islanders.

5 Q Was it a better team in terms of the players than the  
6 team you had previously been playing for?

7 A No, I hadn't made the playoffs in many years. They  
8 were not very good.

9 MR. HALEY: I don't want to prejudice anyone's  
10 performance.

11 THE WITNESS: That's all right. I don't expect  
12 to play next year.

13 MR. HALEY: There you go.

14 Q Now you testified on direct that it was within that  
15 time frame where you now had a five-year contract with  
16 essentially \$20 million contractually coming your way,  
17 that there were discussions between yourself and Phil  
18 Kenner about maybe changing your investment plan?

19 A Just diversifying it a little bit.

20 Q And the diversity involved discussions between you  
21 and Phil Kenner in connection with discussions about land  
22 development, is that true?

23 A Not immediately. There were others before that but  
24 eventually got to that, yes.

25 Q And it reached a point where we talked about land

**M. Peca - Cross/Haley**

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1 acquisition in Big Isle, Hawaii; is that correct?

2 A Correct.

3 Q Now, I don't mean -- did you have an understanding,  
4 sir, that investment in real estate could be particularly  
5 profitable?

6 A It can be, but it's not a certainty.

7 MR. MISKIEWICZ: Objection.

8 THE COURT: Sustained.

9 Q You did have an understanding he was talking to you  
10 about investing in Hawaii. I don't mean to denigrate  
11 another country. He wasn't talking to you about  
12 investments in Nepal, correct?

13 A Correct.

14 Q And the investments that he was suggesting to you by  
15 your own testimony would involve acquisition of land in  
16 Hawaii. I believe you testified that it's your  
17 understanding this would be investments in sugar cane  
18 fields, correct?

19 A I was told that was there at the current time,  
20 correct.

21 Q Upon purchase of the land, the building of an  
22 infrastructure, buildings, roads, water lines, things of  
23 that nature, correct?

24 A Yes.

25 Q And then after this investment was complete, the sale

**M. Peca - Cross/Haley**

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1 of that property, improved property, was for a return on  
2 your investment?

3 A And incremental throughout the process, not  
4 necessarily at the very end.

5 Q But you understood this to be an incremental process;  
6 is that correct?

7 A Correct.

8 Q And yet within this proposal it was also your belief  
9 that commitment of your line of credit for purposes of  
10 that investment would be really a short term type of  
11 commitment?

12 A I was told that, yes. Not the end -- the short term  
13 part of the investment was the risk of my line of credit,  
14 that that would be paid back in six to nine months and my  
15 bond account would be moved back to Schwab and retain the  
16 same equity position in Little Isle IV.

17 Q You had an understanding, did you not, that once you  
18 committed your line of credit, it was likely to be or  
19 would be used almost immediately for the Hawaiian project;  
20 is that correct?

21 A Sure.

22 Q And you testified on direct that to the best of your  
23 memory, Phil told you that there was going to be  
24 approximately a few hundred acres purchased in Hawaii?

25 A Yeah, I couldn't remember the exact number so long

**M. Peca - Cross/Haley**

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1 ago when we discussed it.

2 Q Well, could it have been maybe as many as -- maybe as  
3 much as 6,000 acres?

4 A Could have been.

5 Q Now, I know you never saw the Hawaiian property; is  
6 that correct?

7 A That's correct.

8 Q But you had every opportunity, should you so desire,  
9 to go through, go over there to see the Hawaiian property;  
10 is that correct?

11 A Of course.

12 Q Did you at any point in time, sir, have any reason to  
13 believe that Phil Kenner never took any steps to fulfill  
14 his promise to you that in return for your line of credit  
15 there would be this Hawaiian land development project?

16 MR. MISKIEWICZ: Objection.

17 THE COURT: Sustained as to form.

18 MR. HALEY: All right.

19 Q Indeed, sir, you became aware that in connection with  
20 the recommended investment to you, an LLC called Little  
21 Isle IV was established, correct?

22 A Yes.

23 Q Did you understand what LLC meant?

24 A Yes.

25 Q And it means limited liability company, correct?

**M. Peca - Cross/Haley**

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1 A Correct.

2 Q Indeed did you have an understanding that is a  
3 particularly useful vehicle to use by way of a legal  
4 construct, if you are going to invest in real estate?

5 A I did not.

6 MR. MISKIEWICZ: Objection.

7 THE COURT: Overruled.

8 Q As you sit here today, sir, do you have any reason to  
9 believe that having committed your line of credit to  
10 Little Isle IV, that an ownership interest in Little Isle  
11 IV on your part was not reflected in the books and  
12 records?

13 MR. MISKIEWICZ: Objection.

14 THE COURT: You can answer that.

15 A I have never seen books and records.

16 Q Do you have any reason to believe today, sir, that  
17 your ownership interest -- I'll withdraw the question.  
18 Okay.

19 When Little Isle IV was established -- and you  
20 agree it was established, correct?

21 A I saw documents that went into my accounts, so I  
22 would say yes.

23 Q Well, did you ever request to see the operating  
24 agreement for Little Isle IV?

25 A I did not.

**M. Peca - Cross/Haley**

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1 Q Did anyone ever tell you that an operating agreement  
2 for Little Isle IV was never created?

3 A I never heard that, no.

4 Q As a matter of fact, sir, if I recall your testimony  
5 on direct, that you had an understanding that Little Isle  
6 IV would be an LLC that would own 50 percent of this land  
7 to be acquired in Hawaii and then you would have a  
8 percentage of that 50 percent interest, correct?

9 A Yeah, the numbers were out there again. It was way  
10 back when, but that's kind of how I remember it breaking  
11 down.

12 Q Now, when you had this conversation with Phil Kenner  
13 about collateralizing your line of credit with your bonds,  
14 do you recall what, if anything, he told you about the  
15 value of doing it in that fashion?

16 A He did not.

17 Q Well, I take it you do not recall him telling you  
18 that by collateralizing the line of credit with the bonds,  
19 your bonds would continue to earn interest. Do you  
20 remember that conversation?

21 A I do not.

22 Q Now, you testified on direct, and I believe  
23 repeatedly, that the LLC money was only to be used for the  
24 Hawaii project and nothing else, correct?

25 A To be clear, the line of credit money that we were



**M. Peca - Cross/Haley**

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1 putting up for the project was only to be used for the  
2 Hawaii project. To assume Little Isle IV, yes, because  
3 that's where the money was going and we were told that's  
4 what the money was being used for.

5 Q But having never seen the operating agreement, you do  
6 not know there were any provisions by virtue of the  
7 operating agreement, money could be loaned for other  
8 agreements other than say real estate?

9 A He was my advisor at the time and never notified me  
10 of any such provision.

11 Q Well, you were certainly aware that the line of  
12 credit committed to Little Isle IV would be or did become  
13 the source of a loan to Ken Jowdy with respect to a  
14 project Ken Jowdy was developing in Baja Mexico, correct?

15 A Incorrect.

16 MR. MISKIEWICZ: Objection to the form.

17 THE COURT: Overruled. Your answer is?

18 THE WITNESS: Incorrect.

19 Q Well, that's not what you told the grand jury?

20 MR. MISKIEWICZ: Objection.

21 THE COURT: Sustained as to form.

22 Q Well, sir, in March, specifically March 29, 2011, you  
23 testified before a grand jury in the Southern District of  
24 New York, correct?

25 A I did, yes.

**M. Peca - Cross/Haley**

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1 Q And at that point in time did you give the following  
2 answer to this question.

3 Question: How much money did you put into  
4 Little Isle IV?

5 Answer: \$100,000 cash investment that was going  
6 to go towards that. Then we had lines of credit. I had  
7 one out for \$1.7 million that was going to be used at the  
8 time. Here's where a lot of the cross starts to happen.  
9 A short term loan to Mr. Jowdy, because at the time Cabo,  
10 we hadn't gotten the lender from Lehman Brothers yet, we  
11 made a short term loan until the lending came in.

12 Once the lending came through, they were to pay  
13 back the loan, I think in the neighborhood of  
14 five-and-a-half million dollars, on the closing. It was  
15 never paid back. And then communication basically seized  
16 [sic] at that point in time from him. That was kind of a  
17 whole sticking point as far as me and the other guys with  
18 Mr. Jowdy."

19 Now, when Mr. Miskiewicz asked you about that  
20 testimony, I believe, you simply stopped after the first  
21 three sentences --

22 MR. MISKIEWICZ: Objection.

23 MR. HALEY: I'll rephrase the question.

24 Q Did you not characterize that answer that you gave  
25 before the grand jury as the fabric of the conversation.

**M. Peca - Cross/Haley**

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1 Wasn't that your phraseology?

2 A What do you mean "fabric of the conversation"?

3 Q I don't know, sir, that's the word you used.

4 MR. MISKIEWICZ: Objection.

5 THE COURT: Sustained.

6 Q All right.

7 Well, at that point in time, sir, when you  
8 testified before the grand jury in the Southern District  
9 of New York, the answer that you gave to that question was  
10 truthful, was it not?

11 A Yes, it was.

12 Q And when Mr. Miskiewicz asked you about having been  
13 represented by Ron Richards, you were represented by  
14 Mr. Richards; is that correct?

15 A We never had a retainer agreement but he was there on  
16 my behalf.

17 Q When you went into the grand jury to testify,  
18 Mr. Richards was not seated in that grand jury with you,  
19 was he?

20 A No, sir.

21 Q As a matter of fact, before you testified, you were  
22 told that this was a secret proceeding and that anything  
23 that you testified in the grand jury without your consent  
24 would not be made known to another person, correct?

25 A Correct.

**M. Peca - Cross/Haley**

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1 Q It's not your testimony, is it, sir, that Mr. Ronald  
2 Richards coerced you -- I withdraw that question.

3 All right. Before the grand jury in the  
4 Southern District of New York, did you give the following  
5 answer to this question:

6 Question: Were you consulted in advance about  
7 whether to use the money in Little Isle IV's capital  
8 account to loan the money to the Mexico project?

9 Answer: I knew the short term loan was made to  
10 Mr. Jowdy.

11 Question: Did you know in advance of it being  
12 made?

13 Answer: I probably did. I mean at the time if  
14 I was told about it, I would probably say okay, sounds  
15 good. It was probably explained to me. I can't tell you  
16 definitely right now that you knew the day or time of the  
17 conversation, as it was happening, I wasn't like what  
18 happened to that, I didn't know it would happen, I kind of  
19 knew what we were doing."

20 Is that the answer you gave to that question.

21 A If it's in that document, yes.

22 Q Do you recall giving this answer to this question as  
23 follows:

24 Question: Then, you were getting --

25 MR. MISKIEWICZ: Your Honor, may we approach?

**M. Peca - Cross/Haley**

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1 THE COURT: Yes.

2 (Whereupon, at this time the following took  
3 place at the sidebar.)

4 (Continued.)

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**M. Peca - Cross/Haley**

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1 MR. HALEY: Judge, I can provide you the  
2 transcript.

3 MR. MISKIEWICZ: The objection, he's not  
4 impeaching the witness, he's reading the transcript into  
5 the record. He hasn't even show the witness an  
6 opportunity, shown the witness any portion of this, so  
7 he's just reading it into the record and that is not  
8 impeachment, not proper, I submit, for impeachment. And I  
9 didn't object to the last portion but I'm not even sure  
10 there is anything in what he read that contradicts what  
11 the witness said.

12 THE COURT: Whether it is inconsistent or not is  
13 up to the jury, but I'll allow him to continue.

14 MR. HALEY: Thank you, sir.

15 (End of sidebar conference.)

16 (Continued.)

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**M. Peca - Cross/Haley**

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1 MR. HALEY: Okay, sir.

2 Question: Then you were getting into this  
3 before so that the money was loaned to Ken Jowdy because  
4 they were waiting for some kind of financing to come in?

5 Answer: Correct.

6 Question: And then it never came back?

7 Answer: Correct."

8 Q You testified, sir, on direct that you certainly had  
9 an understanding that if the line of credit was not paid  
10 back, that your bonds, the collateral would be in  
11 jeopardy, correct?

12 A Correct.

13 Q And ultimately that is what occurred as indicated by  
14 the default letters you received, true?

15 A Correct.

16 Q Those default letters, do you know who they were  
17 addressed to?

18 A Myself, I believe.

19 Q Not to the care of Phil Kenner, correct?

20 A I didn't see that on the document so --

21 Q Did you ever see -- withdrawn.

22 I have some additional exhibits, Judge, to be  
23 marked to be shown to the witness. It may take a little  
24 bit of time with counsel to go through the witness.

25 THE COURT: We'll reconvene at 1:45. Have a

**M. Peca - Cross/Haley**

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1 good lunch and don't discuss the case.

2 (Whereupon, at this time the jury exits the  
3 courtroom.)

4 THE COURT: Okay. If everyone will be seated.  
5 So are there any issues we need to discuss or  
6 are we okay?

7 MR. HALEY: Judge, I think we're okay. My only  
8 quick thought as they indicated yesterday, it's already  
9 been introduced in evidence -- I'll withhold that.

10 There are no other issues, Judge.

11 THE COURT: All right. Let's try to be prompt  
12 again at 1:45. Thank you.

13 (Whereupon, an afternoon recess was taken.)

14 (Continued.)

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1 **AFTERNOON SESSION**

2

3 THE COURT: Please be seated.

4 Let's bring in the jury.

5 (Witness resumes the stand.)

6 THE CLERK: All rise.

7 (Jury enters the courtroom.)

8 THE COURT: Please be seated.

9 Mr. Haley, go ahead.

10 MR. HALEY: Thank you, sir.

11 BY MR. HALEY:

12 Q. Now, Mr. Peca, when you testified on several  
13 occasions on direct examination that you never received  
14 any activity reports regarding your line of credit from --  
15 the uses of your line of credit from Northern Trust, did  
16 you ever request such records from Northern Trust at any  
17 point in time?

18 A. No.

19 Q. Well, after Phil Kenner, as you say, told you that  
20 those records were stolen from his home, did you then make  
21 efforts to request those records from Northern Trust?

22 Yes or no?

23 A. No.

24 Q. Now, when the government was asking you questions  
25 about whether you met with attorney Ron Richards before

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1 your grand jury testimony, you recall those questions,  
2 correct?

3 A. Correct.

4 Q. Prior to today, did you meet with the government and  
5 the agents in preparation of your testimony before this  
6 jury?

7 A. Yes, sir.

8 Q. On how many occasions?

9 A. At least a couple.

10 Q. Do you recall the last occasion?

11 A. It would have been Sunday.

12 Q. Could you give us some idea as to the amount of time  
13 you spent preparing for your testimony for this jury with  
14 the US Attorneys and/or the agents?

15 A. Total, or just that day?

16 Q. Total.

17 A. Maybe three, four hours.

18 Q. Now, when you received Government Exhibit 716, the  
19 default letter regarding your line of credit, your  
20 testimony I believe was it was very shocking to get that.

21 Is that correct?

22 A. Yes, sir.

23 Q. That document was addressed to you, was it not?

24 A. I believe so.

25 Q. Sir, isn't it true that you signed any number of

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1 documents for Northern Trust that bear your signature with  
2 your address on those documents?

3 True?

4 A. Yes.

5 Q. You testified on direct that as a result of the  
6 events involving Phil Kenner, Northern Trust, the use of  
7 your line of credit, there came a point in time you  
8 received a portion of your money back from the line of  
9 credit from Northern Trust.

10 Is that correct?

11 A. It wasn't money from my line of credit.

12 It was money that remained in my bank account.

13 Q. I understand the distinction.

14 How much back did you receive?

15 A. It was just over \$600,000.

16 Q. And I take it that at least helped replenish this  
17 retirement account that you have been testifying to, is  
18 that true?

19 A. I didn't consider it that way.

20 Q. So it's untrue?

21 MR. HALEY: I withdraw that.

22 A. Subject to opinion.

23 Q. You also testified on direct that when you asked  
24 Phil Kenner why the \$100,000 went to Constantine  
25 Management Group, his answer was, I believe you said, why

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1 are you asking?

2 A. Correct.

3 Q. And when he said that, what did you say to him?

4 A. I don't remember exactly how the conversation went,  
5 but it was along the lines of we need to stay focused on  
6 what we are doing.

7 And I should have put more attention into  
8 fighting Jowdy than worrying about this stuff now.

9 Q. Do you have a specific recollection that that was his  
10 response or are you just kind of paraphrasing?

11 A. Paraphrasing, but it's pretty close.

12 Q. And you were satisfied with that response, sir?

13 A. Of course not.

14 Q. What did you say in return?

15 A. Nothing.

16 Q. How long have you been playing in the National Hockey  
17 League?

18 A. I have been retired for six years, but I played for  
19 15.

20 Q. You wouldn't consider yourself easily intimidated  
21 would you, sir?

22 A. No.

23 MR. MISKIEWICZ: Objection.

24 THE COURT: Overruled.

25

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1 BY MR. HALEY:

2 Q. That conversation that you say you had with  
3 Phil Kenner, when he said why are you asking and then the  
4 conversation that followed, is that conversation recorded?

5 A. That was prior to me recording conversations.

6 Q. When did you start recording conversations?

7 A. I don't remember.

8 Q. Who suggested you start recording conversations?

9 A. I did.

10 Q. I'm sorry?

11 A. Myself.

12 Q. Perhaps I'm stating the obvious, these were  
13 secretly-recorded conversations.

14 Correct?

15 A. Correct.

16 Q. After you finished recording these conversations with  
17 Phil Kenner, they were maintained on a computer?

18 A. For a while they just remained on apps and on our  
19 phone or on small cassette players.

20 Q. And then at some point they were transferred to a CD  
21 disk?

22 A. Correct.

23 Q. And armed with that information, did you then seek  
24 out law enforcement?

25 A. No.

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1 Q. Armed with that information, did you then contact  
2 counsel to commence civil proceedings against Phil Kenner?

3 A. I didn't view civil action as a viable option.

4 Q. So when was the first time you delivered those  
5 secretly-recorded conversations to anyone other than your  
6 wife?

7 A. I don't remember.

8 Q. Well, in the three interviews with the FBI that you  
9 recall and testified to previously, did you turn those  
10 secretly-recorded conversations over to the FBI agent  
11 during any of those meetings?

12 A. No.

13 Q. Well, do you recall the first time you turned over  
14 these secretly-recorded conversations to any person  
15 associated with law enforcement?

16 A. I don't remember.

17 Q. There came a point in time that you met Ken Jowdy?

18 A. I never met him.

19 I have seen him in a room. I have never spoken  
20 with him. He was introduced in a room full of people, but  
21 I didn't say hey, my name's Michael, or, how are you.

22 He was introduced and that was it.

23 Q. And that occurred, if you recall, in February of 2010  
24 in Los Angeles?

25 A. Correct.

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1 Q. You know if Ken Jowdy was there with his attorneys?

2 A. I believe he did have two attorneys present with him.

3 Q. Do you remember the names of those attorneys?

4 A. I can't recall the female lawyer, but I believe the  
5 male lawyer's name was Tom Harvey.

6 Q. And Phil Kenner was present during this meeting,  
7 correct?

8 A. Correct.

9 He was sitting at the end of a board room table.

10 Q. And Tommy Constantine, is that true?

11 A. Yes, sir.

12 Q. And were there other people you knew, hockey player  
13 investors at this meeting?

14 A. Yes.

15 Q. Who else was there, to your recollection?

16 A. Greg DeVries may have been there, Steve Rucchin may  
17 have been there, I think Tyson Nash's wife was there.

18 There were a couple other guys I can't remember,  
19 exactly.

20 Q. Do you know if during the course of that meeting,  
21 that meeting followed the filing of a lawsuit by  
22 Little Isle IV against Ken Jowdy for his alleged failure  
23 to pay back money loaned by Little Isle IV and Makika to  
24 Ken Jowdy?

25 A. I remember hearing something along those lines, but I

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1 don't remember the specifics.

2 Q. But you remember hearing within the settlement  
3 conference discussions about a claim that Ken Jowdy owed  
4 Little Isle IV a sum of money.

5 Is that correct?

6 MR. MISKIEWICZ: Objection.

7 THE COURT: Overruled.

8 You can answer that.

9 A. I don't recall.

10 Q. What do you recall about the meeting?

11 A. I recall mostly about that meeting a mediator going  
12 from room to room, trying to solve our differences to see  
13 if we can come to some sort of agreement.

14 Q. Do you remember, sir, the subject matter of that  
15 mediation and attempt to resolve differences?

16 What differences?

17 A. I'm not sure, long time ago.

18 I don't remember the conversation.

19 Q. But it certainly involved Jowdy and his attorneys,  
20 correct?

21 A. Correct.

22 Q. Sir, would you kindly take a look at a document  
23 already introduced into evidence as Kenner Exhibit 1.

24 You can certainly look at the entire document,  
25 but I'll refer you at least to the page ultimately that



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1 has this blue tag in it. But I'd like you to look at the  
2 first several pages of the document.

3 You don't have to study them, just have an  
4 understanding as to the content of the document.

5 (There was a pause in the proceedings.)

6 A. Okay.

7 Q. Anywhere on that document do you see your signature?

8 A. Yes.

9 I saw it in the back.

10 Q. Do you have any reason to believe, sir, that you did  
11 not receive that document?

12 A. I remember signing a page that was e-mailed to me  
13 with all these names.

14 I don't remember seeing this whole packet. I'm  
15 not saying I didn't receive it. I'm saying I don't  
16 remember receiving this entire packet.

17 I remember more of the page that had all the  
18 names with the blank spaces.

19 Q. Well, would you look at the page that you signed, and  
20 just read to yourself, I guess the first paragraph.

21 A. Okay.

22 Q. In or about that time, in 2006, sir, would you read  
23 documents that are just one page in length before you  
24 signed them?

25 A. A lot of times Phil would just send me the signature

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1 page.

2 Q. Is it your testimony that as relates to Kenner  
3 Exhibit 1, which bears your signature, that you did not  
4 receive this entire document?

5 Is that your testimony?

6 A. I stated that I don't recall seeing the entire  
7 document.

8 Q. So you may or may not have received it?

9 A. Correct.

10 Q. When you say Phil would send you just a single  
11 document to sign, what, if any, communication would you  
12 have with Phil under those circumstances?

13 A. I got something for you to sign.

14 I'm going to e-mail it or fax it. Sign it and  
15 send it back.

16 Q. But if what you were receiving was only a signature  
17 page, what, if any, communication would you have with  
18 Phil Kenner under those circumstances?

19 A. I would sign the document and send it back.

20 Q. Without further communication with Phil?

21 A. I'm sure we had communication leading up to me  
22 getting the document, and then follow up afterwards,  
23 comfortable enough that I would probably sign the  
24 document.

25 Q. So preceding that type of event, it's your testimony,

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1 your best recollection that you and Phil would talk about  
2 the content of the document he was sending you, so you had  
3 some idea before you signed it from Phil, as to the nature  
4 of the document.

5 Correct?

6 A. For the most part, yes.

7 Q. And if you received that document from Phil Kenner,  
8 and it was inconsistent with what he told you, what if any  
9 conversation would you then have with Phil Kenner?

10 A. I wouldn't see the document.

11 I would just believe what I was told the  
12 document would entail. I'd sign the signature page and  
13 send it back.

14 Q. Sir, would you kindly take a look at a document  
15 marked Kenner Exhibit 16, a July 21st, 2006 document, and  
16 I'll ask you to take a look at -- if you have a gross  
17 understanding of the pages one through six, and then I'd  
18 ask you to take a look again at the page with the blue  
19 mark.

20 (There was a pause in the proceedings.)

21 A. Okay.

22 Q. Do you recognize your signature on that document?

23 A. I do.

24 Q. Now, that document that you are looking at now  
25 containing a signature, there is a few paragraphs above

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1 your signature.

2 Is that correct?

3 A. Yeah, there are six to be exact.

4 Q. Just read the first paragraph to yourself.

5 A. Okay.

6 Q. Is it fair to state, sir, that based upon your review  
7 of that document bearing your signature, that the first  
8 part of the document was, indeed, received by you?

9 Is that correct?

10 A. I only recognize this page with the signature on it.

11 Q. Well, does that first paragraph, sir, read as  
12 follows:

13 I acknowledge receipt of the letter dated July  
14 21, 2006, of Phillip A. Kenner, the lender, to each of the  
15 members of Little Isle IV, LLC, the company, specifically  
16 referencing the first page, July 21, 2006?

17 Is that what it refers to?

18 A. I'm sure it does.

19 Q. Well, under those circumstances, is it your testimony  
20 that you did or did not receive, along with that signature  
21 page, the first seven pages of this document?

22 A. I don't remember seeing these pages.

23 Q. So you may or may not have received it, you just  
24 don't have a recollection.

25 A. I remember seeing the page that was signed.

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1 Q. Well, if that first paragraph references the first  
2 page, July 21, 2006, to the members of Little Isle IV,  
3 LLC, and that was not given to you as part of the package  
4 sent to you by Phil Kenner, would you kindly tell us what  
5 if any conversations you had with Phil Kenner regarding  
6 the missing parts of the document you were signing?

7 A. Things like this were just kind of part of the  
8 relationship.

9 I'd probably be notified that there's, you know,  
10 forms that need to be signed in order to get this thing  
11 going and I'm going to send you a page that needs your  
12 signature, and I would sign it and send it back.

13 That's how the relationship worked.

14 Q. Can we agree, sir, that with the exception of all the  
15 other signature pages, we are only talking about another  
16 six pages with reference to July 21, 2006.

17 Is that correct? Count them yourself.

18 A. I trust you.

19 Q. Is or is it not your testimony that at some point in  
20 July of 2006 you received a letter dated July 21, 2006,  
21 seven pages in length, along with an attachment that  
22 required your signature?

23 MR. MISKIEWICZ: Asked and answered.

24 THE COURT: Sustained, asked and answered.

25

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1 BY MR. HALEY:

2 Q. Sir, is it your testimony that every time Phil Kenner  
3 sent you a document, whether it was by the way of mail or  
4 by way of fax, he would only send you the signature page?

5 A. Most often, yes.

6 Q. And you never, under any of those circumstances,  
7 communicated with Phil and said, hey, Phil, could you send  
8 me the rest of the document?

9 That never happened?

10 A. The reasons I didn't do that --

11 Q. Sir, I'm not asking you reasons.

12 My question is, did it ever happen that when, as  
13 you say, Phil would send you only signature pages, you  
14 would communicate with him in some fashion and say, in  
15 substance, hey, thanks, Phil. I got the signature page,  
16 but can you send me the rest of the document for my  
17 records, to review, to put in my file at home, did  
18 anything like that occur?

19 Yes or no?

20 A. I believe it did from time to time.

21 I don't remember which documents, but he was my  
22 main advisor and I trusted that everything was in order.

23 Q. I know, sir, you testified to that on direct  
24 examination.

25 It's a really simple question and I think you

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1 answered it and I hate to belabor -- I don't want to  
2 belabor the point, but it's the best of your recollection,  
3 this was one of the occasions, the July 21, 2006, where  
4 you didn't receive the whole document.

5 Correct?

6 A. I don't recall.

7 Q. Okay.

8 Sir, would you kindly take a look at Kenner  
9 Exhibit 11, and particularly, the last page.

10 (There was a pause in the proceedings.)

11 A. I recognize that.

12 Q. You do?

13 A. Yes.

14 Q. That bears your signature?

15 A. It does.

16 MR. HALEY: I offer that as Kenner Exhibit 11,  
17 your Honor.

18 THE COURT: Any objection?

19 MR. MISKIEWICZ: No objection.

20 MR. LARUSSO: Can I just see it for a second?

21 MR. HALEY: I'm sorry.

22 MR. LARUSSO: That's okay.

23 THE COURT: Any objection, Mr. LaRusso?

24 MR. LARUSSO: No, I don't, your Honor.

25 MR. HALEY: I'm sorry.

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1 THE COURT: Kenner 11 is admitted.

2 (Whereupon, Defense Exhibit Kenner 11 was  
3 received in evidence as of this date.)

4 BY MR. HALEY:

5 Q. Sir, would you kindly take a look at Kenner Exhibit  
6 12.

7 A. I recognize it.

8 Q. That bears your signature, correct?

9 A. It does, but it wasn't notarized in my presence.

10 Q. Okay.

11 MR. HALEY: I'd offer that as Kenner Exhibit 12.

12 MR. LARUSSO: Let me take a quick look.

13 MR. MISKIEWICZ: No objection, your Honor.

14 THE COURT: Any objection, Mr. LaRusso?

15 MR. LARUSSO: No, I don't, your Honor.

16 THE COURT: Kenner 12 is admitted.

17 (Whereupon, Defense Exhibit Kenner 12 was  
18 received in evidence as of this date.)

19 BY MR. HALEY:

20 Q. Sir, would you kindly take a look at Kenner Exhibit  
21 13.

22 A. That does look familiar.

23 Q. Is that your signature?

24 A. Yes, sir.

25 MR. HALEY: I offer Kenner Exhibit 13, your



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1 Honor.

2 MR. MISKIEWICZ: No objection.

3 MR. LARUSSO: No objection.

4 THE COURT: Kenner 13 is admitted.

5 (Whereupon, Defense Exhibit Kenner 13 was  
6 received in evidence as of this date.)

7 BY MR. HALEY:

8 Q. Take a look at a document marked Kenner Exhibit 15.

9 Do you recognize that document?

10 A. I think so, yeah, looks familiar.

11 Q. Okay.

12 MR. LARUSSO: No objection, your Honor.

13 THE COURT: Any objection from the government?

14 MR. MISKIEWICZ: No objection, your Honor.

15 THE COURT: 15 is admitted, Kenner 15.

16 (Whereupon, Defense Exhibit Kenner 15 was  
17 received in evidence as of this date.)

18 BY MR. HALEY:

19 Q. Would you kindly take a look at Kenner Exhibit 17.

20 A. Okay.

21 Q. Do you recognize that document?

22 A. I don't recognize the document as much as the other  
23 ones, but...

24 Q. Do you recognize your signature on the document?

25 A. I wouldn't contest my signature at all.

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1 Q. By the way, are you familiar with your wife's  
2 signature?

3 A. Yes.

4 Q. Do you see her signature on the document?

5 A. I did.

6 Q. That is her signature, correct?

7 A. I couldn't say for certain.

8 It looks like it.

9 Q. Okay.

10 MR. HALEY: I'd offer this as Kenner Exhibit 17.

11 MR. MISKIEWICZ: No objection.

12 MR. LARUSSO: No objection, your Honor.

13 THE COURT: Kenner 17 is admitted.

14 (Whereupon, Defense Exhibit Kenner 17 was  
15 received in evidence as of this date.)

16 BY MR. HALEY:

17 Q. Sir, would you kindly take a look at Kenner Exhibit  
18 18, and take your time looking at that document.

19 (There was a pause in the proceedings.)

20 BY MR. HALEY:

21 Q. Do you see your e-mail address on that document, sir?

22 Perhaps I could help.

23 A. I'll find it.

24 I see my name, yes, next to my wife's e-mail.

25 Q. Do you have a memory of receiving -- well, do you

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1 have a memory of receiving that document from Michael  
2 Stolper, either delivered to you or your wife and she then  
3 showed you the e-mail?

4 A. It does look fairly familiar, yes.

5 Q. In June of 2011, do you know if Phil Kenner had an  
6 e-mail address, kenner33@gmail.com?

7 A. He may have.

8 Q. Now, does the entity known as Naalehu Ventures,  
9 N-A-A-L-E-H-U, Ventures, 2006, LLC mean anything to you?

10 A. Not necessarily the LLC, but I have heard Naalehu  
11 before.

12 Q. Well, do you have a memory, sir, of receiving a  
13 transfer to your account 289369 of \$580,026, on August  
14 25th, 2006, from Naalehu Ventures which maintained an  
15 account at Northern Trust?

16 A. What was the question?

17 Q. Do you recall, sir, receiving a transfer to your  
18 account, account No. 289369, from Naalehu Ventures as  
19 relates to the Northern Trust account, sir?

20 A. I don't recall that because I had no documents for  
21 that line of credit account.

22 Q. Your answer is I don't recall?

23 A. Meaning I don't -- I have no knowledge of that, is my  
24 correct -- is what my answer is.

25 Q. Did you become aware that there came a point in time

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1 where a loan was obtained from Lehman Brothers to help the  
2 continued financing of the Hawaiian land development  
3 project?

4 A. I know there was a discussion of that being a  
5 possibility.

6 I wasn't aware of when exactly it took place.

7 Q. Well, do you have any memory of after the closing of  
8 that loan you receiving a transfer to your account at  
9 Northern Trust in the amount of \$580,026?

10 MR. MISKIEWICZ: Objection, asked and answered.

11 THE COURT: I'll let him answer again.

12 Go ahead.

13 A. It was a line of credit, again, I had no knowledge of  
14 the transaction details of that account.

15 Q. Did there ever come a point in time, sir, before your  
16 testimony today that you sat down and examined, you  
17 personally, the money coming in and going out to your line  
18 of credit at Northern Trust from the opening of the  
19 account at Northern Trust through 2006 to the point in  
20 time where, as indicated by a letter, it was closed?

21 A. No, not in great detail, no.

22 MR. HALEY: One moment, Judge.

23 (There was a pause in the proceedings.)

24 BY MR. HALEY:

25 Q. Thank you, sir.

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1 THE COURT: Okay.

2 Mr. LaRusso.

3 MR. LARUSSO: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MR. LARUSSO:

6 Q. Good afternoon, Mr. Peca.

7 A. Hello.

8 Q. My name is Robert LaRusso. I represent  
9 Mr. Constantine.

10 You testified that -- and excuse my voice, I  
11 have a little bit of a cold -- the first time you met  
12 Mr. Constantine was in your home in Dublin, Ohio, I  
13 believe you said?

14 A. Correct.

15 Q. You had -- he was with Mr. Kenner?

16 A. Yes, he was.

17 Q. And your wife was present --

18 A. Correct.

19 Q. -- throughout your meeting with him.

20 A. Yes.

21 Q. I believe this is in evidence, Government Exhibit  
22 757.

23 This is the e-mail the government showed to you  
24 during your direct examination, correct?

25 A. Yes, sir.

**M. Peca - Cross/LaRusso**

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1 Q. And this is from Mr. Phil Kenner to you and your wife  
2 at the e-mail address KMPGP here, correct?

3 A. Correct.

4 Q. You discussed certain portions of this with  
5 Mr. Miskiewicz, and you said that ten days prior to this  
6 you actually sent the money to the Global Settlement Fund,  
7 I believe it was to the Ron Richards account.

8 Is that right?

9 A. Correct.

10 Q. Would it be fair to say that before you met --

11 MR. LARUSSO: Withdrawn.

12 BY MR. LARUSSO:

13 Q. I'll direct your attention to the highlighted  
14 portion, and I'll read it, this is Mr. Kenner to you:

15 You may not recall Tommy and I --

16 THE COURT: Or.

17 BY MR. LARUSSO:

18 Q. Or I mentioning the Palms unit in our conversation.

19 When you read that, you understood that to mean  
20 the meeting that you had with Mr. Constantine and  
21 Mr. Kenner.

22 Is that correct?

23 A. Correct.

24 Q. Would it be fair to say that this first meeting that  
25 you had would have been sometime either on May 8th, the

**M. Peca - Cross/LaRusso**

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1 date of the wire transfer, or before?

2 A. Yes.

3 Q. Do you recall how long before the May 8th transfer,  
4 if you do?

5 A. I don't.

6 Q. Between the time that you first met Mr. Constantine  
7 and the time you received this e-mail, did you have any  
8 communications with Mr. Constantine, either in person or  
9 on the telephone, or all of it with Mr. Kenner, if any?

10 A. Not that I recall.

11 I didn't have many conversations, if any, with  
12 Mr. Constantine.

13 Q. You testified, and correct me if I'm mistaken, that  
14 Mr. Constantine was on the phone eight to 12 minutes at  
15 some point during the visit with you and your wife?

16 A. Yeah.

17 I mean, it may not have been that long. It's  
18 hard to judge exactly how long the call was. It seemed  
19 like it was that long.

20 Q. Could have been longer?

21 A. Could have been longer or shorter, hard to say.

22 Q. Or shorter.

23 Do you remember at any time Mr. Constantine  
24 asking to be excused to go outside to speak to the person  
25 that he was on the telephone with?

**M. Peca - Cross/LaRusso**

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1 A. I don't recall.

2 Q. Now, this telephone conversation that Mr. Constantine  
3 had, you remember overhearing his portion of the  
4 conversation.

5 Is that correct?

6 A. We could hear him speaking, yes.

7 Q. So he was -- was he in the same room where you were  
8 or was he a distance away, but enough for you to hear  
9 parts of the conversation?

10 A. I don't think ever as far as you and I are right now.

11 Q. Now, you testified I believe in answer to  
12 Mr. Miskiewicz's question whether or not you knew if, in  
13 fact, he was speaking to somebody.

14 Do you remember that?

15 A. Yes.

16 Q. And would it be fair to say that you would not know  
17 one way or another other than the fact that it appeared to  
18 you when he was speaking on the telephone with somebody.

19 Is that correct?

20 A. Correct.

21 Q. But you do remember in his telephone conversation  
22 discussing --

23 MR. LARUSSO: Withdrawn.

24 BY MR. LARUSSO:

25 Q. Tell us what you said on direct.



**M. Peca - Cross/LaRusso**

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1                   What do you remember him discussing at that  
2 point?

3       A.    The phone conversation?

4       Q.    Yes.

5       A.    I don't remember much of the phone conversation.

6                   It just seemed like two guys were having a  
7 conversation that they may have had before.

8       Q.    Do you remember saying that it had to do with  
9 substantial funding, a lot of money?

10                  Remember you were talking about -- you were  
11 relating it to the reason he was there.

12       A.    I just remembered the phone call -- I don't remember  
13 the context -- content of what he was discussing on the  
14 phone.

15                  I just recall that he said that it was a  
16 gentleman who was going to be -- have interest in  
17 purchasing this property in Cabo, or a portion of it,  
18 sorry.

19       Q.    And I think you said on direct examination somewhere  
20 in the neighborhood of \$15 to \$20 million?

21       A.    That was not the purchase price.

22                  That was the part after the sale that would be  
23 fronted after the sale to fund everybody's investments.

24       Q.    It would be returned back on some of the money that  
25 was allegedly lost.

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1 Is that correct?

2 A. Correct.

3 Q. Did you ever hear him mention in that first meeting  
4 an individual by the name of Mr. Sonnenblick,  
5 S-O-N-N-E-N-B-L-I-C-K?

6 A. That does sound familiar, yes.

7 Q. Let me show you what has been marked for  
8 identification as Defense Exhibit --

9 MR. LARUSSO: One moment, your Honor.

10 Your Honor, I apologize. Some of the exhibits I  
11 didn't make copies, so I may have to take a few minutes to  
12 make sure they had an opportunity to look at this one.

13 BY MR. LARUSSO:

14 Q. I'm not going to forget you.

15 This is for identification. It's  
16 Defense Exhibit Constantine C 24.

17 Take a look at the whole thing, please, if you  
18 would.

19 (There was a pause in the proceedings.)

20 A. Okay.

21 Q. Do you recognize this?

22 A. Vaguely.

23 I'm not -- yeah.

24 Q. Let me ask --

25 MR. LARUSSO: If I may stay here for a few

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1 preliminary questions?

2 THE COURT: Yes.

3 BY MR. LARUSSO:

4 Q. This is a group e-mail.

5 A. Yes, our e-mail is on that.

6 Q. And your e-mail address is on there?

7 A. Yes.

8 Q. And there are a whole bunch of other e-mails.

9 Do you recognize any of those?

10 A. I recognize Jay McKee, that was his ex-wife's e-mail.

11 I mean, I recognize the names which makes me  
12 identify their e-mail addresses.

13 Q. After you had met Mr. Constantine, he had  
14 communicated with you and your wife and other individuals  
15 that you have identified, via group e-mails.

16 Is that correct?

17 A. Correct.

18 Q. And this is one of the e-mails that you recall  
19 receiving during the course of those communications with  
20 Mr. Constantine?

21 A. Sure.

22 MR. LARUSSO: Your Honor, may I ask that this be  
23 received in evidence at this time?

24 MR. MISKIEWICZ: May we approach, your Honor?

25 THE COURT: Yes.

**M. Peca - Cross/LaRusso**

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MR. MISKIEWICZ: Thank you.  
THE COURT: Please approach.  
(Continued on next page.)

**M. Peca - Cross/LaRusso**

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1 (Sidebar.)

2 MR. MISKIEWICZ: Generally, just we object on  
3 hearsay grounds.

4 Even if the e-mail, itself, were admissible and  
5 I understand the court's ruling regarding a similar one  
6 yesterday, but even if that were to come in, what is  
7 attached, this letter from potentially entirely fictitious  
8 character, Sonnenblick, should not ever be admitted and  
9 this is total hearsay.

10 THE COURT: Overruled.

11 I'll explain later.

12 MR. LARUSSO: Thank you, your Honor.

13 (Sidebar concluded.)

14 (Continued on next page.)

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1 (In open court.)

2 MR. LARUSSO: Your Honor, at this time I'd like  
3 to display the exhibit to the jury.

4 THE COURT: Yes.

5 C 24 is admitted.

6 (Whereupon, Defense Exhibit C 24 was received in  
7 evidence as of this date.)

8 (The above-mentioned exhibit was published to  
9 the jury.)

10 BY MR. LARUSSO:

11 Q. Mr. Peca, we were talking about a group e-mail,  
12 that's the first part of it, all the people that  
13 Mr. Constantine was e-mailing that information.

14 Is that correct?

15 A. Yes.

16 Q. And I'm going to note the date, November 9, 2009.

17 Is that correct?

18 A. Yes, it is.

19 Q. There came a point in time sometime after --

20 MR. LARUSSO: Withdrawn.

21 BY MR. LARUSSO:

22 Q. Let me read the first paragraph:

23 All, I am happy to report that we have executed  
24 the memorandum of understanding, see attached document,  
25 with the buyer that I have been working with for almost a

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1 year. Specifically, here we have executed an agreement  
2 for him to purchase the Cabo loan from the bank, invest  
3 further in and fully develop the Cabo project, as well as  
4 provide the \$15 million, quote, cash out, end quote, of  
5 the deal for our settlement costs.

6 Is that correct?

7 A. That's what it says, yes.

8 Q. And that -- and this information that Mr. Constantine  
9 is providing to you here in November of 2009 was  
10 consistent with some of the comments that were made to you  
11 regarding the purposes of the Global Settlement Fund.

12 Is that correct?

13 A. Yes, instead of the term settlement costs it was just  
14 make you whole on investments that he made.

15 Q. But this was consistent with what you felt the  
16 purposes of the contribution that you made were.

17 Right?

18 A. Sure.

19 Q. I'm just going to read a few more and I may have  
20 questions. I want to finish this up:

21 The fact that we were able to negotiate a  
22 cash-out scenario for our settlement costs, in any market  
23 let alone this one, is a huge win for us. This will allow  
24 us to make good on all Jowdy Mexico related investments,  
25 any personal loans made to Jowdy, including Hawaii, by any

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1 of you and our legal fees, while -- in brackets -- all of  
2 us retaining an equity share --

3 THE COURT: Stake.

4 MR. LARUSSO: I'm sorry, Judge?

5 THE COURT: You said share, it's stake.

6 BY MR. LARUSSO:

7 Q. I'm sorry, stake in the new project in Cabo, with a  
8 capable and well-funded developer.

9 Again, this is consistent with your reason for  
10 making the contribution.

11 Is that right?

12 A. Yes.

13 Q. Now, interestingly, this group e-mail also talks  
14 about an attachment.

15 Correct?

16 A. I --

17 Q. Down at the bottom?

18 A. Okay.

19 Q. You see it, now you see it?

20 A. Okay, yes.

21 Q. And you actually got the document, with the following  
22 pages and I'll show the first page which is -- actually,  
23 it's the second page of the document, it's the first page  
24 of the attachment, November 4th, 2009 from a Robert  
25 Sonnenblick.



**M. Peca - Cross/LaRusso**

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1                   You see that?

2       A.    I do see that.

3       Q.    And then without going through all the terms at this  
4       point I'm just going to refer now to the fourth page of  
5       the document, which is the signature page, and it has  
6       there Mr. Constantine's signature and Mr. Sonnenblick's as  
7       well.

8                   Is that correct?

9       A.    It appears to, yes.

10      Q.    So there appears to be a memorandum of understanding  
11      in place, and if you remember to provide the funding and  
12      hopefully secure the \$15 million that Mr. Constantine told  
13      you he was working on for the purposes of Global  
14      Settlement Fund.

15                  Is that correct?

16      A.    Sure.

17      Q.    Now, we know that this particular loan never went  
18      through.

19                  Is that correct?

20      A.    That is correct.

21      Q.    Do you know --

22                  MR. LARUSSO: Let me withdraw that.

23      BY MR. LARUSSO:

24      Q.    Do you know if this deal ever was consummated?

25      A.    To my knowledge, it was not.

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1 Q. Though the deal was supposed to allocate the proceeds  
2 to each of the hockey players, not just select few,  
3 everyone was going to share in the benefits of this  
4 agreement if it was successful.

5 Is that right?

6 A. For those that contributed to the Global Settlement  
7 Fund, yes.

8 Q. And are you aware, as you are testifying here today,  
9 that Mr. Jowdy sued this investor, which caused him to  
10 withdraw from the deal?

11 A. I wasn't aware of that.

12 Q. Just a few points.

13 In regards to the meeting with Mr. Kenner and  
14 Mr. Constantine and your wife, and just really a point of  
15 clarification, you testified that Mr. Constantine did all  
16 the talking.

17 Would it be fair to say that's not really  
18 accurate, I mean, he may have done most of the talking,  
19 but Mr. Kenner did make some comments and did participate  
20 in the conversation?

21 A. Yes.

22 I think I testified that Mr. Kenner introduced  
23 Mr. Constantine, but, you know, Tommy did carry the  
24 conversation for the most part.

25 Q. Right.

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1           The majority of the conversation, as you  
2 recall --

3       A.    Yes.

4       Q.    -- was Mr. Constantine.

5       A.    Yes.

6       Q.    But do you recall also when you first -- excuse me --  
7 when you spoke to the FBI and I believe Mr. Haley was able  
8 to establish that on one occasion you spoke with them on  
9 February 22nd of 2012, I don't know if he asked you this,  
10 at the Marriott here in -- in Uniondale, New York?

11      A.    Yes.

12      Q.    Home of the Islanders, or ex-home of the Islanders, I  
13 guess, correct?

14      A.    Yes.

15      Q.    And do you remember in that meeting telling them that  
16 Mr. Constantine was acting sick.

17            He didn't speak much at the meeting --

18      A.    Mr. Kenner, you mean.

19      Q.    Mr. Kenner, I apologize. Thank you for correcting  
20 me.

21            But Mr. Kenner did say he needed money to fight  
22 Ken Jowdy?

23      A.    Yes.

24      Q.    That Phil Kenner had exhausted all funds for the  
25 legal expenses to fight him?

**M. Peca - Cross/LaRusso**

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1 A. Correct.

2 Q. He said he can't give up the fight, he'll lose all  
3 the money if I stop.

4 A. That was the fear, it all hinged on Phil.

5 Q. And that he can't keep coming to you guys for money?

6 A. Correct.

7 Q. So minor point, Mr. Kenner did participate in some  
8 respects with the substance of the conversation.

9 A. Yes.

10 Q. At the time of the meeting, and thereafter, were you  
11 able to form an opinion as to who was in charge of the  
12 Global Settlement Fund around the time you first became  
13 aware of it and agreed to participate?

14 A. Well, around the time from inception, our belief is  
15 it was going to the attorney Ron Richards account, that he  
16 would kind of oversee given it was a legal fund.

17 But I do remember a conversation that I had with  
18 Phil regarding litigation in Mexico and he said he  
19 couldn't do it because he didn't have money and I remember  
20 calling Tommy to ask him why we couldn't use money from  
21 the global settlement for Phil and the answer was Mexico  
22 was too much of a crap shot and unpredictable legally.

23 So there's no money to go towards the Mexican  
24 part of it.

25 Q. So from your perspective, who would you say was the

**M. Peca - Cross/LaRusso**

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1 one that was primarily responsible, if more than one,  
2 answer that as well.

3 A. From my understanding Tommy was in charge of Global  
4 Settlement Fund.

5 Q. And that came from whom?

6 A. That came from both Phil Kenner and Ron Richards.

7 Q. And when did you learn that?

8 A. After the money had already been gone.

9 Q. Before the money went, before the money had been  
10 spent, before you were apprised of that, what was your  
11 belief as to who was in charge of the Global Settlement  
12 Fund?

13 A. Initially Ron Richards and, as it was ongoing,  
14 Tommy Constantine.

15 Q. And what was Phil Kenner's participation in that, as  
16 you recall?

17 A. He didn't seem to have one.

18 Q. Just a few more questions on this.

19 You also said that there was a portion of the  
20 conversation dealing with Eufora, is that correct?

21 A. Small portion, there was a small portion that dealt  
22 with things other than the loan and the Jowdy thing, all  
23 that stuff.

24 Q. But that conversation related to your investments  
25 through Mr. Kenner that took place back in, I believe you

**M. Peca - Cross/LaRusso**

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1 said, 2004.

2 Is that correct?

3 A. Say that again.

4 Q. The Eufora, your investments in Eufora took place  
5 about 2004, I think it was your testimony.

6 A. '04 and '08.

7 Q. '04 and '08?

8 A. Yes.

9 Q. One of your investments was the \$166,000 that you  
10 invested through Mr. Kenner in Eufora.

11 Is that correct?

12 A. That is correct.

13 Q. And that investment, was that an option to buy?

14 Do you remember?

15 A. I don't recall.

16 Q. What you actually purchased, if you recall, was an  
17 option to buy an interest in Eufora, if you decided to  
18 exercise an option.

19 Do you remember that?

20 A. I don't.

21 Q. Mr. Peca, I'm going to show you what's been marked  
22 for identification as Mr. Constantine's exhibit C 25.

23 Would you take a look at that, please. There  
24 are two pages. I actually removed one. We can always  
25 insert it if it's necessary.

**M. Peca - Cross/LaRusso**

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1 A. I think I remember that document.

2 Q. The second one is a document bearing your signature?

3 A. Yes.

4 It's messed up because it had one of those old  
5 roller faxes.

6 Q. I'm sorry.

7 You have to speak up.

8 A. I said I recognize the signature going over it twice,  
9 it was one of those old roller faxes in '04.

10 Q. I didn't notice that until you pointed that out.

11 Thank you.

12 MR. LARUSSO: Your Honor, I may I ask that this  
13 be admitted in evidence as Exhibit C 25?

14 MR. MISKIEWICZ: No objection.

15 MR. HALEY: May I?

16 MR. LARUSSO: Sure.

17 (There was a pause in the proceedings.)

18 MR. HALEY: No objection.

19 THE COURT: C 25 is admitted.

20 (Whereupon, Defense Exhibit C 25 was received in  
21 evidence as of this date.)

22 MR. LARUSSO: I'd like to display it to the jury  
23 at this time, if I could.

24 (The above-mentioned exhibit was published to  
25 the jury.)

**M. Peca - Cross/LaRusso**

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1 BY MR. LARUSSO:

2 Q. This is a facsimile cover page, facsimile  
3 transmittal, correct, Mr. Peca?

4 A. Correct.

5 Q. And it's to you, Mike Peca?

6 A. Yes, it is.

7 Q. With your fax number over on the right?

8 A. Yes.

9 Q. And it says Phil Kenner, and it's dated July 10,  
10 2004.

11 Is that right?

12 A. Yes, it is.

13 Q. It's referencing Eufora option.

14 A. Okay.

15 Q. I took off the third page, but I'll insert it if it's  
16 necessary later.

17 It says three pages, correct?

18 A. Correct.

19 Q. I'm going to read and hopefully accurately this time:

20 Michael, attached are, the wire instructions for  
21 the payment to Eufora, the option agreement for Eufora.  
22 Please sign the two documents and return them to me via  
23 fax at 949-673-3812. I'm leaving Sunday at 6 a.m. for  
24 Europe, so if you could return them today I would  
25 appreciate it. I would like to handle it for you and



**M. Peca - Cross/LaRusso**

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1 Eufora before I leave.

2 Please call me today with any questions. Speak  
3 with you soon. Thanks, Phil.

4 And the second page is the option to purchase.  
5 You see that?

6 A. Yes.

7 Q. And it's a one-page document with your signature at  
8 the bottom?

9 A. Yes.

10 Q. So the jurors understand your testimony, because of  
11 the fax you had to write over, is that correct, is that  
12 the way your testimony is in regards to the signature --

13 A. Correct.

14 Q. -- had to write over, is that fair?

15 A. Yes.

16 Q. So you saw this document, correct?

17 A. I saw -- yes.

18 Q. And would it be fair to say that you read the  
19 document?

20 A. Yeah, I probably did at the time.

21 Q. And what was your understanding of an option to  
22 purchase membership interest in Eufora?

23 A. That I was investing in Eufora and that's where my  
24 money was going.

25 Q. What was the option?

**M. Peca - Cross/LaRusso**

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1 A. I wasn't sure what the option was.

2 Q. Did you have a chance to read over the paragraphs  
3 which talk about the terms of the option and the  
4 alternative option?

5 A. I'm sure I did at the time.

6 I wouldn't have understood a lot of that stuff  
7 and would have had to have a conversation with my advisor  
8 about it.

9 MR. LARUSSO: If I may, your Honor, reading just  
10 the portions -- I'm not going to read the securities act  
11 down at the bottom.

12 I'll read the ones relating to the option.

13 BY MR. LARUSSO:

14 Q. Point No. 1, payment for option:

15 Optionee hereby agrees to pay to optionor the  
16 sum of \$166,000 as consideration for the option granted  
17 herein.

18 Not to get too technical, but you are the  
19 optionee, right? You are the one that is being granted  
20 the option for your contribution of \$166,000, correct?

21 A. Correct.

22 Q. Terms of the option.

23 Optionee may exercise the option to purchase at  
24 any time beginning on the date -- excuse me -- on the date  
25 first above given, up to and including the day which is

**M. Peca - Cross/LaRusso**

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1 exactly six months from the above date. The purchase  
2 price shall be \$1.

3 Optionee shall exercise the option by giving  
4 written notice to the optionor of optionee's decision to  
5 exercise the option. Optionor shall complete the transfer  
6 of 1 percent membership interest in Eufora, with adequate  
7 documentation within 30 days of the date of the notice  
8 given by optionee, including all documentation necessary  
9 to provide free and clear ownership to optionee, including  
10 optionee's right to vote the 1 percent interest.

11 Knowing there is a lot of legalese in there and  
12 that's what lawyers get paid for, what did you understand  
13 that to mean?

14 A. Really not much.

15 Q. Okay.

16 So it had something to do with you give your  
17 money, you have an option if you want, you pay \$1 in six  
18 months and you are going to get your shares in Eufora.

19 Is that a fair statement?

20 A. Sure.

21 Q. And if I'm wrong, please correct me.

22 A. Yes.

23 Q. Thank you.

24 And the second alternative or alternatively,  
25 optionee may elect to cancel this option in return for a

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1 payment of optionor to the optionee in the sum of  
2 \$185,000. The election to cancel this option may be made  
3 by the optionee given written notice of such to optionor  
4 within a period of time commencing two months from the  
5 date of this option and ending six months from the date of  
6 this option.

7 Upon receiving written notice of cancellation  
8 from the optionee, optionor shall pay the \$185,000 to  
9 optionee within 30 days.

10 Fair to say the second option says if you don't  
11 want the equity interest they are going to give you your  
12 money back plus interest on the \$180,000?

13 A. Sounds like that, yes.

14 Q. Did you exercise either option?

15 A. That would have been my advisor's role to exercise  
16 that option on my behalf.

17 Q. As you are sitting here today, do you know that that  
18 option wasn't exercised?

19 A. I did not know that.

20 Q. As you sit here today, do you know that even though  
21 the option wasn't exercised at the time, Mr. Constantine  
22 decided to treat that option as if it was exercised for  
23 your own benefit?

24 Did you know that?

25 A. I didn't know that that was the case.

**M. Peca - Cross/LaRusso**

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1 I do know that it was reflected in a document I  
2 received of my equity position in Eufora.

3 Q. So you can't say if it wasn't exercised properly at  
4 the time, but you do know at some point you got the equity  
5 interest.

6 Is that correct?

7 A. I do, yes.

8 Q. Thank you.

9 Do you currently hold an interest in Eufora, AZ  
10 Eufora I, LLC?

11 A. That's a great question.

12 Q. You don't know, do you?

13 A. No idea.

14 Q. Would it also hold true for the other hockey players  
15 as well?

16 A. I imagine so.

17 Q. By the way, when Mr. Constantine was on that  
18 telephone, he was talking to somebody about raising money,  
19 some seven months later, if my math is off, six months  
20 later an agreement was provided to you to review hopefully  
21 to provide the funds.

22 Is that correct?

23 A. For what funds, for what?

24 Q. In compliance with the settlement -- Global  
25 Settlement Fund.

**M. Peca - Cross/LaRusso**

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1 A. Oh, yes.

2 Q. Okay.

3 This e-mail, which was introduced as  
4 Government Exhibit 757, I want to refer back to this for a  
5 few minutes, you received that at 1:14 in the morning,  
6 correct?

7 A. That's when the e-mail would have come through our  
8 server.

9 But we probably didn't get to it until the  
10 following morning.

11 Q. And in sum that e-mail indicates that they are  
12 looking for written authorization regarding the use of the  
13 Global Settlement Fund.

14 A. Correct.

15 Q. Would it also be fair that you and your wife read  
16 this e-mail?

17 A. We did.

18 Q. Or any other e-mails relative to this, correct?

19 A. Yes.

20 Q. Did you and/or your wife respond to that e-mail?

21 A. Yes.

22 I initialled and e-mailed it back, or scanned  
23 and faxed it back.

24 Q. Do you remember who you scanned it back to?

25 A. Phil Kenner.

**M. Peca - Cross/LaRusso**

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1 Q. You did not have Mr. Constantine's e-mail address?

2 A. We may have.

3 I just -- I think I remember sending it to Phil,  
4 not Tommy.

5 Q. But he was your financial advisor, so --

6 A. Correct.

7 Q. -- since he had asked for the written authorization  
8 in this e-mail, you sent it back to him?

9 A. Correct.

10 Q. Okay.

11 You didn't sign it on May 18th, did you?

12 A. I don't remember.

13 Q. Do you recall taking any time between the receipt of  
14 that e-mail and discussing it for a number of days with  
15 your wife before you actually agreed to sign this  
16 agreement?

17 A. I remember we were looking for clarification on some  
18 of these things that were in this e-mail.

19 Q. So as a result, prudent of you and your wife took the  
20 opportunity to review thoroughly what you were  
21 contributing the money to the Global Settlement Fund for?

22 A. Correct.

23 Q. As a matter of fact, do you remember writing back to  
24 Mr. Kenner the same day seeking that clarification before  
25 you signed the approval letter?

**M. Peca - Cross/LaRusso**

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1 A. I'm not sure if I did.

2 My wife may have done that.

3 Q. Mr. Peca, let me show you what has been marked for  
4 identification as C 26, and ask you to take a look at  
5 that.

6 Do you recognize that?

7 A. I do.

8 Q. Would it be fair to say, if I may, that contains the  
9 first e-mail that we were talking about, correct?

10 That's the one that's up on the board --

11 A. Here?

12 Q. Down at the bottom, almost two thirds of this exhibit  
13 contains the e-mail that's up on display.

14 I don't have the exhibit number.

15 MR. LARUSSO: Let me for the record make sure I  
16 get it accurate, Government Exhibit 757.

17 BY MR. LARUSSO:

18 Q. So this exhibit has reproduced, correct, 757?

19 A. Yes.

20 Q. But there's also another portion of this. There is a  
21 reply to that e-mail.

22 Is that right?

23 A. There is.

24 MR. LARUSSO: Your Honor, may I ask that that be  
25 received at this time?



**M. Peca - Cross/LaRusso**

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1 MR. MISKIEWICZ: No objection.

2 THE COURT: Mr. Haley, any objection?

3 MR. HALEY: No, your Honor.

4 I'm sorry.

5 THE COURT: C 26 is admitted.

6 (Whereupon, Defense Exhibit C 26 was received in  
7 evidence as of this date.)

8 BY MR. LARUSSO:

9 Q. Just so the jurors understand the earlier questioning  
10 that I talked with you about, Mr. Peca, this portion where  
11 my finger is, it says May 18, 2009, 1:14 a.m.

12 That was the earlier exhibit, Government Exhibit  
13 757, is that correct?

14 A. Correct.

15 Q. All right.

16 We go up to the top, this is a reply by your  
17 wife to Mr. Kenner, correct?

18 A. Yes, it is.

19 Q. You were aware of this, am I right?

20 A. Yes.

21 Q. And the reply occurs on the same day at  
22 approximately -- or 6:10 and 43 seconds a.m.

23 Is that correct?

24 A. Yes.

25 Q. PDT, do you know what that is?

**M. Peca - Cross/LaRusso**

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1 A. I don't either.

2 Q. I'm sure somebody will help us out.

3 In any event, it's referencing the global  
4 settlement, is that right?

5 A. It seems to, yes.

6 Q. I'm going read a few lines:

7 Hey, before we sign off on an, in quotes,  
8 approved, end quote, letter, can we please have the  
9 written documentation as to exactly how much percentage,  
10 is in brackets, we obtained with our contribution?  
11 Michael mentioned last Monday that you told him we'd have  
12 it by last Wednesday, but we still haven't received it.  
13 We want to be diligent about our record keeping.

14 I read that correctly?

15 A. Yes.

16 Q. What was your wife referring regarding we haven't  
17 received it?

18 A. We were looking for clarification on the original  
19 e-mail.

20 Based on our conversation that the incentive  
21 would be acquiring percentages and things, so we wanted to  
22 know exactly how much before we got involved.

23 Q. Correct.

24 MR. LARUSSO: I'm sorry. That's an  
25 inappropriate comment.

**M. Peca - Cross/LaRusso**

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1 I apologize.

2 BY MR. LARUSSO:

3 Q. So your e-mail was, and your wife's e-mail which you  
4 were aware of, was an attempt to clarify the percentage  
5 that you would be receiving in a number of companies and  
6 entities that either exist or may be acquired.

7 Is that correct?

8 A. Just to have a better understanding of it, yes.

9 Q. Now, this occurs, it's early in the morning, but we  
10 can seem you read it and your wife read it, right?

11 A. Yes.

12 Q. And there are a whole bunch of phrases in here, but  
13 the only portion that you asked for clarification was the  
14 percentage of the shares you would get for your  
15 contribution.

16 Is that correct?

17 A. Correct.

18 Q. Let me just review with you, if I could, what's in  
19 the e-mail that was originally sent to you:

20 Per our conversation -- and I'm reading --  
21 please acknowledge your approval and authorization for me  
22 to have wire transferred \$250,000 to attorney Ron  
23 Richards' trust account for your proportionate  
24 contribution to the Global Settlement Fund.

25 Now, we know you already transmitted it. This

**M. Peca - Cross/LaRusso**

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1 is kind of an effort to memorialize what you had already  
2 orally agreed to and contributed to. Correct?

3 A. Yeah, more of what we understood.

4 Q. Okay.

5 But it is after the fact?

6 A. Correct.

7 Q. You didn't think anything untoward was being done by  
8 signing -- doing this on the 18th, even though you  
9 contributed earlier, did you?

10 A. No.

11 MR. MISKIEWICZ: Objection.

12 THE COURT: Overruled.

13 BY MR. LARUSSO:

14 Q. I believe the answer is no, is that correct?

15 A. Correct.

16 Q. Second sentence:

17 In addition to the fund paying for various legal  
18 fees. I'm going to stop there.

19 That was part of the first discussion at the  
20 meeting with Mr. Constantine, is that right?

21 A. That was involved in the conversation, yes.

22 Q. That's where you knew at this point that a lot of the  
23 money that had been invested in Hawaii, yours included,  
24 had been sent to Mr. Jowdy down to his Mexican project.

25 Is that correct?

**M. Peca - Cross/LaRusso**

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1 A. I wasn't aware of that money being given to Jowdy at  
2 that time, no.

3 Q. Do you know what the purpose of suing Jowdy was?

4 A. I knew it had to do with the loan.

5 I just wasn't aware at the time that it was my  
6 money that was used for the loan.

7 Q. Did you ask?

8 A. No.

9 Q. Did you inquire what legal fees?

10 A. Well, the legal fees were going to be for Ron  
11 Richards and our litigation as a group.

12 Q. But to do what?

13 A. To sue Ken Jowdy.

14 Q. For what?

15 A. For a loan.

16 Q. The loan that he got for his Mexican project?

17 A. Correct.

18 Q. And what was your involvement in that loan that was  
19 made to Mr. Jowdy?

20 A. I'm not sure because I wasn't told that I was going  
21 to actually be a part of the lawsuit at that time.

22 Q. But you are agreeing to pay money into it?

23 I'm sorry. I'm --

24 A. A lot of --

25 Q. Just to clarify?

**M. Peca - Cross/LaRusso**

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1 A. That was a lot of contributing to the Global  
2 Settlement Fund that had nothing to do with Cabo or  
3 Hawaii, it was a group effort and team thing because in  
4 the end of it everyone was going to be made whole.

5 From our conversation in the house we were all  
6 going to be made whole from all of our investments from  
7 Tommy and --

8 Q. But, in any event, you are contributing to a legal  
9 fund to sue Jowdy and you didn't know why he was being  
10 sued?

11 A. That was the most important part of the conversation,  
12 to make the decision.

13 Q. Mr. Peca, I can see the position and I think you told  
14 the jury on a number of occasions that it was an effort  
15 and a hope to be able to recover what you lost.

16 Isn't that what it was?

17 A. That's all we really had for a lot of years, is  
18 clinging to that hope.

19 Q. So you didn't question this one further in your first  
20 response about five hours later, did you?

21 A. Correct.

22 Q. The next one is PR agency fees.

23 Do you know what that is?

24 A. Yes, that was discussed.

25 You know, like I said earlier, Tommy had been

**M. Peca - Cross/LaRusso**

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1 upset about an article that involved Phil, but also  
2 included him in the article, and it was just going to be  
3 used for if we wanted to get a favorable article in the  
4 newspaper that a PR firm can help put together on our  
5 behalf.

6 That's how we understood it.

7 Q. So it was okay for you because they disclosed the  
8 fact that there may be expenses from the Global Settlement  
9 Fund to do just that?

10 A. Correct.

11 Q. Now, it also says, as well as other protective  
12 advances and settlement costs.

13 Let me take protective advances. Did you ask  
14 for clarification of those words?

15 A. I did not.

16 Q. Did you know what those words meant at the time?

17 A. The first time those words came to my attention was  
18 through a friend of mine, Jay McKee, who was also involved  
19 in the Global Settlement Fund.

20 Q. So you learned from Mr. McKee what the words were?

21 A. Not --

22 Q. Sometime later -- I'll give you a chance, Mr. Peca, I  
23 apologize. I want -- my train of thought goes one way.

24 You learned later from Mr. McKee what those  
25 words meant?

**M. Peca - Cross/LaRusso**

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1 A. Not necessarily what they meant, but what they  
2 represented for Mr. Constantine.

3 Q. But at this time you didn't ask for clarification?

4 A. No, I didn't.

5 I didn't know what it meant.

6 Q. Did you ask for any clarification when you were --  
7 did this come up at the meeting?

8 A. No.

9 Q. Well, if it didn't come up at the meeting and you see  
10 it in this letter, didn't you --

11 MR. LARUSSO: Withdrawn.

12 BY MR. LARUSSO:

13 Q. You didn't ask for clarification, even though it  
14 didn't come up in the meeting, but it's coming up in this  
15 authorization.

16 Is that correct?

17 A. Yeah I -- correct.

18 Q. Thank you.

19 And settlement costs, what did you understand  
20 that to mean?

21 A. Other legal fees.

22 Q. Again, relating to Mr. Jowdy, is that correct?

23 A. Correct.

24 Q. Is it possible that there were other suits  
25 contemplated as well by the investors?



**M. Peca - Cross/LaRusso**

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1 A. There may have been.

2 Q. It then says:

3 You will be receiving transfers of membership  
4 agreements from Tommy for your acquisition of additional  
5 interest in Eufora, LLC, as well as your new LLC and  
6 operating agreements -- bear with me -- reflecting your  
7 ownership interest in the Avalon Airpark real estate  
8 project, the Falcon Ten aircraft and the two Palms Place  
9 condominium units.

10 You see that?

11 A. I do see, yes.

12 Q. You saw that when you reviewed it?

13 A. Yes.

14 Q. Did you ask for clarification on that?

15 A. We didn't ask for clarification.

16 We were just asking what the percentages were  
17 as, again, I stated the incentive of doing the global  
18 settlement, we were told that our money was going to be  
19 used to settle outside lawsuits in order to acquire those  
20 percentages.

21 Q. But it's saying here that you may be acquiring as a  
22 result of this Global Settlement Fund an interest in these  
23 entities.

24 Is that correct?

25 A. Correct.

**M. Peca - Cross/LaRusso**

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1 Q. When you read this, you didn't ask for clarification,  
2 correct?

3 A. We did.

4 We asked for --

5 Q. I'm sorry.

6 On the e-mail --

7 MR. MISKIEWICZ: Objection.

8 BY MR. LARUSSO:

9 Q. I meant --

10 MR. MISKIEWICZ: Objection.

11 BY MR. LARUSSO:

12 Q. Go ahead.

13 Answer the question.

14 MR. LARUSSO: I'll let him answer, Judge, and  
15 I'll rephrase.

16 A. Can you repeat the question?

17 Q. I apologize, Mr. Peca. It's been a long day and I'm  
18 not feeling well, so please bear with me.

19 On May 18th, 2009, when you wrote the response  
20 back, or your wife did, I apologize, you did not ask for  
21 clarification of the percentages you were going to be  
22 obtaining, correct?

23 A. Correct.

24 Q. All you asked was the percentage, you wanted to know  
25 what it was?

**M. Peca - Cross/LaRusso**

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1 A. Correct, just to have a better understanding of it.

2 Q. In any case, because Moreau and Tommy settled that  
3 case as part of the Global Settlement Fund, we had  
4 graciously elected to include you as a beneficiary with  
5 significant equity that exists in those two units as part  
6 of this transaction.

7 What did you understand that to mean?

8 A. That one in particular, that wasn't mentioned in the  
9 conversation we had at the house.

10 Q. Again, I won't belabor it, you didn't ask for  
11 clarification?

12 A. No.

13 Q. Do you know a person by the name of Moreau?

14 A. I do.

15 I played with him.

16 Q. And first name?

17 A. Ethan Moreau, I played with him in Edmonton.

18 Q. I'm sorry.

19 I didn't get his first name?

20 A. Ethan.

21 Q. Were you aware at the time you entered into this  
22 settlement agreement that he had been suing Kenner and  
23 Jowdy and Mr. Constantine, along with Owen Nolan and a  
24 third individual escapes me, I believe it was Mr. Juneau?

25 A. I knew some lawsuits.

**M. Peca - Cross/LaRusso**

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1 I didn't know the extent of the lawsuits.

2 Q. And in looking at this, the agreement or this  
3 authorization request indicates that a settlement had been  
4 reached with Mr. Moreau.

5 Correct?

6 A. That's what it said, yes.

7 Q. And that's part of what was discussed in regards to  
8 the Global Settlement Fund.

9 Is that correct, to buy out their interests?

10 A. Not that I was aware of, no.

11 Not that I understood it.

12 Q. How did you understand it?

13 A. That we were supporting the legal fund and, as so,  
14 the incentive was that we would get percentages of those  
15 following companies.

16 Q. And then, lastly, as we discussed, rather than  
17 throwing money away only on legal fees, the strategy which  
18 effectively acquires significant assets while providing a  
19 legal remedy is by far our best solution.

20 You remember reading that?

21 A. I do.

22 Q. And then, of course, the last sentence is that  
23 Mr. Constantine -- I'm sorry -- Tommy has requested from  
24 all of us and will provide to us written documentation of  
25 every element of this transaction. Please respond,

**M. Peca - Cross/LaRusso**

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1 acknowledged and approved to this e-mail accordingly ASAP.

2 When did you send back your acknowledgment and  
3 approval for this --

4 A. I don't remember.

5 Q. -- Global Settlement Fund, best recollection, four  
6 days, five days, a week, two weeks?

7 A. I don't remember.

8 MR. LARUSSO: May I approach, your Honor?

9 THE COURT: Yes.

10 BY MR. LARUSSO:

11 Q. Mr. Peca, Mr. Constantine Exhibit C 28.

12 Would you take a look at that.

13 A. Okay.

14 Q. Does that appear to be the e-mail response that we  
15 have been talking about?

16 A. Yes, looks like it came four days later.

17 Q. And you recognize it as one sent by your wife?

18 A. Actually, I'm the one who typed it, but, yes.

19 Q. I'm sorry.

20 That's your response in regards to the request  
21 to authorize the Global Settlement Fund and approve it?

22 A. Yes.

23 MR. LARUSSO: May I ask that C 28 be received,  
24 your Honor?

25 MR. MISKIEWICZ: No objection.

**M. Peca - Cross/LaRusso**

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1 THE COURT: Mr. Haley, any objection?

2 MR. HALEY: Your Honor, may I just see it for a  
3 moment?

4 THE COURT: Yes.

5 (There was a pause in the proceedings.)

6 MR. HALEY: No, sir, thank you.

7 THE COURT: C 28 is admitted.

8 (Whereupon, Defense Exhibit C 28 was received in  
9 evidence as of this date.)

10 BY MR. LARUSSO:

11 Q. I'll display it to the jury.

12 (The above-mentioned exhibit was published to  
13 the jury.)

14 BY MR. LARUSSO:

15 Q. E-mail from -- that's your e-mail address at the top,  
16 Mr. Peca?

17 A. Yes, that's my wife's e-mail.

18 Q. May 22, 2009, to Mr. Kenner, re: global settlement,  
19 and I understand and accept the terms of this settlement  
20 plan, thanks.

21 Between the time that you asked for  
22 clarification of the settlement agreement where you sought  
23 only information on your percentage, were there any other  
24 e-mails between the one on May 18th at 6:13, I believe, in  
25 the morning, to the time that you send a reply here on May

**M. Peca - Cross/LaRusso**

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1 22nd?

2 A. I can't remember.

3 Q. But it would be fair to say that you had four days to  
4 consider that agreement?

5 A. Correct.

6 Q. Four days to consult with your wife?

7 A. Correct.

8 Q. Four days to speak to your financial advisor?

9 A. Correct.

10 Q. And speak to anyone you felt necessary before you  
11 executed an agreement and committed \$250,000?

12 A. Yes.

13 Q. Now, I know that you told us the first time that you  
14 met Mr. Constantine was at your home.

15 Did you ever correspond with him by e-mail  
16 before that?

17 A. I don't recall.

18 That was the first time I had met him.

19 Q. But would it be fair to say that after you met him,  
20 you and he exchanged numerous e-mails for a number of  
21 years regarding many of the topics we have been  
22 discussing?

23 A. Absolutely.

24 MR. LARUSSO: Judge, if it's all right with you,  
25 this may be the last exhibit.

**M. Peca - Cross/LaRusso**

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1           It will probably take us about five minutes and  
2           I could actually use a break.

3           BY MR. LARUSSO:

4           Q.    Let me show you what's been marked, Mr. Constantine,  
5           as Exhibit C 27.

6                    There are two pages. I'm focusing in on the  
7           first one, if I may.

8           A.    Okay.

9           Q.    Do you recognize this?

10          A.    I do, yes, I have seen this.

11          Q.    That is an e-mail from Mr. Constantine to you, if I  
12          can get the date, May 18th, 2009.

13                   Is that correct?

14          A.    Correct.

15          Q.    Do you need an opportunity to take a look at it?

16          A.    No.

17          Q.    Do you know what it contains?

18          A.    I have seen it, yes, I read it.

19          Q.    Just tell the ladies and gentlemen, briefly, what  
20          Mr. Constantine is reporting to you at this time.

21          A.    He is further describing some of the companies that  
22          were mentioned in the Global Settlement Fund.

23          Q.    So Mr. Constantine was providing more information  
24          about what was the purpose of the Global Settlement Fund  
25          and what it was going to do.



1 Is that correct?

2 A. He was.

3 MR. LARUSSO: Your Honor, may I ask at this  
4 time -- because I'll be going into a new area --

5 THE COURT: You want to admit the document  
6 first?

7 MR. LARUSSO: Yes, I'm sorry.

8 I'd like to admit it as C 27.

9 MR. MISKIEWICZ: No objection.

10 MR. HALEY: No, sir.

11 THE COURT: C 27 is admitted.

12 (Whereupon, Defense Exhibit C 27 was received in  
13 evidence as of this date.)

14 THE COURT: We are going to break for the day.

15 We will reconvene tomorrow at 9:30. Don't  
16 discuss the case. Don't read anything or listen to  
17 anything regarding the case and have a good night.

18 (Jury leaves the courtroom.)

19 THE COURT: You can step down, Mr. Peca.

20 (Witness steps down.)

21 THE COURT: Everyone can be seated.

22 How much more do you have, Mr. LaRusso?

23 MR. LARUSSO: Probably a half to 45 minutes,  
24 your Honor.

25 THE COURT: Okay.

1 Then the next witness is Kristin Peca?

2 MR. MISKIEWICZ: Yes.

3 THE COURT: Is she relatively short?

4 MR. MISKIEWICZ: We may have one very short  
5 witness, a Shimon Betesh, who will be testifying about a  
6 portion of where Mr. Peca's money went and then Ms. Peca.

7 I don't think she'll be that brief, but she  
8 shouldn't be that long.

9 THE COURT: Who's after that?

10 MR. MISKIEWICZ: Aaron Mascarella from Northern  
11 Trust and we told this to the defendants and after that  
12 Bryan Berard and after that I have given them a number of  
13 other names, the Kaisers and that probably gets us into  
14 next week.

15 THE COURT: Any issue with any of those  
16 witnesses we expect for tomorrow?

17 MR. LARUSSO: I don't anticipate any that I know  
18 of at this point, Judge.

19 THE COURT: Okay.

20 Mr. Haley, you anticipate any issues?

21 MR. HALEY: I don't anticipate any issues.

22 THE COURT: Okay.

23 Have a good night. See you tomorrow.

24 MR. LARUSSO: Thank you, your Honor.

25 MR. HALEY: Thank you, your Honor.

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MR. MISKIEWICZ: Thank you, your Honor.

(The trial was adjourned until Thursday, May  
7th, at 9:30 a.m.)

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